THE REGULATION OF MUNICIPAL UTILITIES

NATIONAL MUNICIPAL LEAGUE SERIES

THE REGULATION OF MUNICIPAL UTILITIES

EDITED BY

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INTRODUCTION

At the first meeting of the National Municipal League, held in Minneapolis in December, 1894, a paper on "Some Essentials of Good City Government in the Way of Granting Franchises," by Edward W. Bemis, was presented. From that time on the subject of public utility franchises has been considered at length at the various sessions of the League. There have been numerous papers describing local conditions, with comments on the lessons involved; there have been numerous suggestions as to the ways and means of handling the franchise problem in American cities; there have been authoritative articles on the various movements, state and municipal, to control franchises in the interest of the people; there have been sundry propositions looking toward a solution of the several phases of the problem: there have been carefully prepared reports; and, above all, there were the formal recommendations of the Committee on Municipal Program promulgated in 1900, which have been widely followed and generally concurred in.

In this way the League has accumulated a large amount of information and discussion, a greater part of which is no longer available to the increasing circle of the League's members and followers because the edi-

tions of the volumes in which the papers appeared are now exhausted. It is not feasible to reprint all the papers presented to the League, so the Publication Committee, acting in coöperation with the Executive Committee, has invited Dr. Clyde L. King, of the University of Pennsylvania, to prepare a volume embodying the more important papers presented to the League, bringing them up to date and supplementing them with such additional information and discussion as the situation demands.

Dr. King has been signally successful in preparing a volume which we are persuaded will be of widespread usefulness alike to publicists, officials and instructors. He has approached the whole subject with deep interest in it, and with a careful training as evidenced in his important volume on "The History of the Government of Denver with Special Reference to Its Relations with Public Service Corporations." A very considerable portion of the volume is entirely new matter from Dr. King's own pen, and represents the latest thought on this subject of pressing importance. The volume is sent out with the hope that it will aid in a clearer comprehension of the principles to be followed in the granting, control and management of public utility franchises and in guiding an aroused public sentiment on the subject along lines of a sound public policy.

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CHAPTER I

THE NEED FOR REGULATION

THE big fact of the 20th century is that the happiness, health, and prosperity of the urban dweller will largely shape the happiness, health, and prosperity of our nation as a whole.

In the evolution of municipal activities it has come to pass that the urban dweller's most important needs are secured through public service corporations. But relatively few of the present-day needs of the inhabitants of our cities are secured by the machinery of city government. Through the city police the urban citizen is protected from an occasional theft or from a possible trespass on his property. Through the city's fire department he is given prompt assistance in case of fire. He shares the city's sidewalks and paved streets. He may enjoy an occasional municipal park. If fortunate in the city in which he chances to dwell, he may have a municipal social center for himself, and play-grounds and recreation centers for his children. But for the light with which he reads, he is dependent upon a private corporation. Perchance for the steam that warms his house, certainly for the water that determines sickness or health, he must rely upon private corporations. For the telephone that saves his steps, for the street railway service that gives value to his property and determines the ease

and dispatch with which he can perform his business obligations and the amount of time he may spend in his home and in recreation, he is dependent upon private corporations. For the protection of his life and property from brute violence he has the aid of public agencies; but for the advancement of his financial, physical, and moral well-being and happiness he must depend upon the efficiency of private agencies. The urban dweller is, therefore, more dependent upon the degree of thoroughness with which these private agencies are regulated than he is upon the efficiency of his city govenrment proper. In the interest of his well-being these concerns must be thoroughly regulated.

Our present attitude toward utility regulation, and the adequacy of present-day methods of regulation, may best be gotten at by a summary review of the history of the regulation of public callings.

The right to regulate public utilities in the interests of the common weal is as old as the common law itself. The one principle that is essential to the most primitive of community life is that no one individual shall so use his own as to bring injury and decadence upon the many. The second principle, more ancient than the English common law, the basic principle in that law, indeed, is that he who devotes his private property to a public use thereby clothes it with a public interest. That public interest, in the eyes of the law, has ever justified public regulation.

There is, therefore, a memorial and fundamental distinction between a public and a private calling. Upon those who profess a public calling, law and custom impose affirmative duties; upon those who profess a private calling, law and custom impose negative duties only. He who professes a private calling may refuse to sell, but he

who professes a public calling must serve all who come. To those in a private calling the law says, you must not do this, or, if you do it, you must do it thus; to those in a public calling the law says, you must do this for all applicants and you must do it thus. That is, the duties of those in a public employment are affirmative, not negative.

What particular employments are held to be sufficiently freighted with public interest to classify them as public employment, and hence subject to public control, has ever varied with economic conditions and social standards.

In manorial days, he who secured from his lord a franchise to operate the manorial bake-house or mill had to serve all fairly, or answer to the courts of the manor. In mediæval days, not only the baker, the miller, and the inn-keeper, but the barber, the tailor, the victualer, and the smith were held to be in public callings, and hence had to supply all patrons on equal and customary terms. When physicians and surgeons were rare, their callings were also classified as public callings, and they had to serve and serve reasonably all who might call upon them.

When the manorial system broke down and the governmental unit came to embrace not one but many manors, and, more important still, one or more towns, a new set of callings were held to be fraught with public interest, and hence subject to public regulation. Chief of these were the ferryman, the wharfinger, and the carrier. Long before the common law idea of contracts was sufficiently developed to hold one in ordinary dealings to his contracts, one in these public callings could be held to his bargains.

The mediæval state, moreover, regulated the prices of all commodities held to be necessary to the well-being

of the community. Thus the early Assemblies in Massachusetts generally regulated the price of corn, tobacco, bread, and beef. In 1635, shop-keepers and merchants were specifically forbidden by the Massachusetts Assembly to charge excessive prices. In 1668, with the growing scarcity of lumber, Plymouth fixed the prices of boards that the building of homes might not be seriously impeded.

In these earlier days monopolies were recognized and the price of their output was regulated. Monopolies were recognized in our own colonial history. For instance, the general court of Massachusetts, in 1648, granted a license to the shoe-makers of Boston to form a guild for the better regulation of their trade and invested this guild with the monopoly of the market. In the same year similar privileges were granted to the coopers of Boston and Charlestown. Monopolies, that is, were held to be public callings just because they were monopolies, and their prices subject to public regulation.

During the closing years of the 18th century, social classes that before had had no influence in governmental circles began to demand that their industrial interests be at least not thwarted and subverted in order to further the industrial interests of the well organized minority, the gentry, who controlled the machinery of government. On every hand were new industrial opportunities. Men but asked for freedom to make the most of those opportunities without interference from the old governing classes. This freedom was put into the form of the so-called " laws " of *laissez faire* and competition. The radicals of the day, that is, sought industrial freedom by demanding that the government keep hands off and leave each individual free through competition to work out his own industrial status and salvation. Such were the

"theories" that men were using to justify their social and industrial demands at the time when the United States was throwing off the status of colonies and assuming the status of an independent nation. In the United States these theories found complete acceptance. Their acceptance was all the more rapid because their adoption would bring to an end the exploitation of the colonies in the interests of the governing class in England, and because industrial opportunities here were so numerous that the aid of the government was not essential to success. Our industrial history, therefore, begins with the general acceptance of the principles of *laissez faire* and competition.

Laissez faire and competition were policies well fitted to the conquest of the forest and the prairie. They were not policies, however, that were adapted to thickly populated communities and to the services needed by cities. Men may well be given a free hand in exploiting the material world, but exploitation of the social world is fraught with many public dangers. Hence the demand of the 20th century is for the substitution of governmental regulation for competition as a regulative agency in municipal utilities.

As to these and related concerns, *laissez faire* and competition have outlived their usefulness. Along with the principles of individualism, society is now accepting the principles of collectivism. It is substituting a group economy for an individual economy. Industrial success in the 19th century lay in exploiting forests and prairies; industrial success in the 20th century lies in exploiting communities and in capitalizing future social needs. Those who profess to serve the public needs of cities can therefore no longer be allowed to contemplate merely their own benefit in all they do. They must be made to

include in their motives some sense of social responsibility.

Great, however, as was the change from the mediæval view of state and community regulation to the 19th century view of non-interference by the state, the change was never complete. Even when the principles of competition and *laissez faire* were most rampant, there were certain callings that were still held to be sufficiently vested with public interest to warrant public regulation. The chief of these were the callings that had to do with highways. The success of the industrial order of the 19th century depended as much upon free and efficient transportation, as it did upon non-interference by the state and upon industrial competition between individuals and corporations. Hence the common law principles as to public callings were perpetuated as to turn-pikes, toll bridges, canals, ferries, and waterways. With increasing population, other callings were added, the most famous of which was the inclusion of the railroads as common carriers by the Supreme Court in its epoch-making decision in Munn vs. Illinois. The distinctions of the common law as to public and private callings still exist, therefore, and are held to be capable of indefinite extension. Upon these common law distinctions, the 20th century must rely for the enforcement of governmental regulation of municipal utilities.

The courts were very slow, however, in holding that public services in cities were vested with sufficient public interest to justify public regulation. They first held that these utilities could not be subjected to public control. Then for a brief period, about the middle of the 19th century, they held that such utilities could not be regulated by the public unless the right to regulation was stated in express clauses in the company's charter of in-

corporation. For instance, a New Jersey Court in 1858 held (3 Dutch N. J. 245, 72 Am. Dec. 360) as to the rights of a gas company under its charter: "The language of the charter is throughout permissive and not compulsory. The company may organize, may make and sell gas, or not at their pleasure. And I see no more reason to hold that the duty of doing so is held to be imperative than to hold that other companies incorporated to carry on manufactories, or to do any other business, are bound to serve the public any further than they find it to be to their interest so to do."

About this time a new judicial impediment to the public regulation of municipal utilities was erected through the interpretation of the 14th amendment of the National Constitution. This amendment was adopted to secure for the emancipated slave and for such "persons" only, equal protection before the laws, including the denial to any state to take the property of such "persons" without due process of law. The Supreme Court interpreted such "persons" to include corporations. But in the meantime the courts were classifying other municipal utilities as public callings.

Even a quarter of a century ago the public services that were recognized were still few, and the law as to those imperfectly stated. For instance, the courts recognized all sorts of excuses as to the duty to serve, and there was no standard as to reasonableness of rates, unless it was the customary charge. As to adequate facilities, the courts recognized nothing beyond the general principles as to negligence, while the duty not to discriminate was denied altogether by the weight of authority. Urged on by virulent public opinion, by advanced legislation, and by the urgent and vital needs of thickly settled communities, however, the courts have extended the pub-

lic calling to include all municipal utilities, and have clothed all corporations, firms, and individuals carrying on such business with certain vital, affirmative duties.

Our courts now hold that all corporations, firms and individuals engaged in municipal utilities are charged with the following legal duties: (I) To perform all reasonable duties prescribed by the statutes; (II) To perform the following common law duties: (a) serve all who apply; (b) provide safe and adequate facilities; (c) charge just and reasonable rates; (d) make no discriminations.

So far as private properties devoted to municipal utilities is concerned, therefore, we have clearly passed from the principles of competition and *laissez faire* to the recognition of the principle that all such callings are public and hence subject to public regulation. This furnishes the *basis* for a constructive policy for adequate regulation. It is not in itself regulation.

The basic justification for rigid public regulation of municipal public service corporations is that they are essentially natural monopolies, and hence subject to no other regulative force. Competition does not persist among natural monopolies and no amount of legislation can make it persist. Every state in the union, save six, has stringent legislation which purports to make competition persist among this class of monopolies and competitive combinations; but none of these laws have in the slightest inhibited the formation of such monopolies.

The explanation as to why we were so long in throwing over competition as a regulative factor in such services, lies in the fact that American cities did not have such services until late in the 19th century. In 1800 there were public waterworks in but five American cities, and not until 1842, when the New York Croton Reser-

voir was completed, was there a modern water system of any size. Candles did not give way to gas-lighting until the third decade of the 19th century, and electric lighting was not in vogue until much later. Street railways as commercial successes are scarcely over half a century old. In these facts lies the explanation as to why competition was so long thought to be a regulative factor, and as to why public legislation only recently frankly admits that there is no advantage in even trying to force competition to persist.

The limitation of supply, as with water companies, large scale service, as with telephone companies, waste through duplication both of fixed and circulating capital in all competing municipal utilities, the necessity of consuming products or services in connection with the plants from which they are supplied, and the difficulties of distribution, as with gas, water, steam and electric companies, the fact that two companies cannot occupy the same street for identical service, as with street railways, and that even if such were physically possible, as with water, gas and telephones, it would prove so wasteful as to be unprofitable,—all these are economic forces, much stronger than any opposing legislation, that inevitably and rapidly make for thorough-going monopoly in all municipal utilities. Competition has never, and will never for any length of time, fix rates on such services. Without virile public regulation these rates will be determined by the principle of maximum returns. The denser the population, and hence the greater the social need, the more iniquitous becomes this basis for fixing rates. The abiding social and industrial interests of every community demand that the community that is being served, as well as the individual or corporation that affords the service, must be given adequate consideration when rates

are fixed, when standards of service are determined upon, and when extensions are made. This can be accomplished only through constructive regulation. Society cannot afford to allow those who have a monopoly upon the most salient needs of urban life to exploit the many simply to bring added shekels into the pockets of the few.

The very value of all such public utilities has been made, indeed, by the community at large, as well as by the proprietors themselves. If the public has in part made these values, it should have the right to determine how the profits arising from them should be distributed, and the right and duty of seeing that these values shall be so administered as not to be inimical to the best interests of the community.

The character of the need for regulation must largely shape the method of regulation. It is hence advisable to review the character of the abuses that regulation must correct, and the character of constructive policies that regulation will make possible.

In the first place, regulation is needed for the protection of the individual. The individual must be protected against discrimination as to rates and services. There can be no actual equality before the law, and none before the community in the prosecution of business, unless municipal utilities serve all on equal terms. Discrimination by municipal serving corporations is much more prevalent than it is commonly supposed to be. Soon after the Wisconsin public utility law went into effect, it was estimated that the discrimination in rebates to favored customers of telephone, water, heat, and light companies amounted to as much as $2,000,000 annually. Even as late as August, 1909, fifty-two per cent. of the telephone companies, sixty per cent. of the water, thirty-five per

cent. of the gas, and fifty-six per cent. of the electric companies of Wisconsin, admitted that they still maintained discriminatory rates. In Lacrosse, 113 out of 2,319 users of electricity got reductions amounting to a monthly rebate of $1,942. In Madison, 1,359 out of 5,000 telephone users received reductions amounting to $11.20 per month. In one city of 4,000 inhabitants, the water companies served seven big consumers free of charge. Discrimination is not more prevalent in Wisconsin than in most of the other states in the Union. Wisconsin, indeed, is but a typical example.

Discrimination in services is even more prevalent and is brought about through the guise of " reasonable " regulations. The courts have uniformly held that, since regulations must play such a large part in the conduct of business, great freedom and discretion must be given to those who are confronted with the problem of reducing to order a business as complicated as the activities of municipal utilities usually are. Hence, our judicial decisions have usually justified regulations made by utility companies in good faith, unless they are " plainly outrageous," no matter how great the hardship may be on any particular individual. This puts the burden of proof upon the consumer. In order to get the regulations as to his water, light, heat, telephone or other service changed, he must prove existing regulations to be plainly " outrageous " in their general operation. This the small consumer will not do. Even if he does and gets redress, the rule may be so mildly modified as to suit his particular case, but to bring no redress to the wrongs of his neighbors. A utility company cannot be prevented, therefore, from so framing its rules and regulations that they will suit the favored customer admirably, while thwarting the needs of the average consumer.

Thus regulations may be issued, governing the time, place, manner and form in which the service will be rendered. They may establish priorities in service, provided only that adequate provision be made for all business conditions. They may "pro rate" the available facilities. They may lay down "reasonable" conditions on which alone the company will perform services. They may establish "reasonable" limits as to districts within which alone service will be rendered. They may provide for "reasonable" time for performing any and all of its services. Mere "delay" in performing services, the courts will not object to until the delay is so great as to amount to an abandonment of the contract, or is so gross as to indicate departure from the undertaking, and then the burden of proof is upon the consumer to show that the delay might have been avoided by proper precautions. The company has only to show the intervention of unforeseen obstacles or some "act of God or other sudden disaster," as a certain law puts it. Such a costly, cumbersome, ineffecive manner of securing readjustment of bad regulations, with no actual power of securing reasonable regulations, is so "plainly outrageous" as to point to the urgent need of substituting some other method. No community can put aside its duty to provide for its every citizen equality in rates and services. Not to do so is to undermine the very foundation of social and governmental progress.

Not only is the individual entitled to be free from discrimination in rates and services, but he is also entitled to fair and reasonable rates and services. Without competent public regulation, the urban dweller has no means by which he can secure reasonable rates and services, no means, indeed, by which he may know what a reasonable rate and service is. He is wholly at the mercy of the

public service corporation. Regulation by law-suit offers no relief. The cost of a unit of service to the average consumer is so small that he will not go to the expense and trouble of a suit to have his rates reduced or his service improved. This the utility corporation knows full well. This knowledge gives it practically a free hand in making such rates, and in offering such services as it pleases.

There is need, not only for regulation, but for a method of regulation that will be fair and just alike to the consumer, the corporation, and the community. For instance, just what a reasonable rate is, is a very complex question. The interest both of the company serving and the customer served must be considered. A rate which is reasonable from the point of view of one, may be quite unreasonable from the point of view of the other, and a rate which is reasonable to both may be eminently unfair to the community at large. The company is interested in making a rate that will bring in the largest returns; the consumer is interested in making a rate that will bring to him the largest possible returns with the least possibly outlay. There should be a common tribunal with adequate facilities and sufficient information for the fair determination of such problems.

Public regulation of municipal utilities is also necessary in order to protect the utility companies themselves. The corporation that has organized and equipped a plant to serve the public is entitled to adequate protection from unwarranted encroachments from the public. The same principle that makes such corporations amenable to public regulation, that they are freighted with public interest, necessitates that these corporations be protected from hasty and ill-advised public encroachments upon their property. The rights and privileges of the corporation

must be as clearly recognized as the rights and privileges of the consumer and the community. The greatest need for regulation at the present time is for the adequate protection of the honest public utility and the innocent investor therein. Speculators and promoters of public utilities must not be free to exploit the consumer and the investor. They can no longer be allowed to place such capitalization as they please upon their public utilities, and then make the public support that capitalization through high rates and poor service. This principle the United States Supreme Court has recognized in the case of Covington and Lexington Town Pike Railroad Company vs. Sandford (164 U. S. 596). In this case the Court said:

A corporation is not entitled as of right and without reference to the interests of the public to realize a given per cent. upon its capital stock. Speculators are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. A leading need for regulation is that all may know when capitalization is unreasonable and when rates and services are not adequate to meet public needs. The interests of the corporation demand such regulation, as well as the interests of the consumer.

As important and as of deep import as the rights and needs of the individual and of the corporation, are the rights and interests of the city as a whole. The rights of the individual and the corporation should not be overlooked. Neither should the rights and needs of the city fail to receive their due and equal recognition. The city must protect itself, as well as the individuals that com-

pose it and the corporations that serve it. The corporation is primarily an association instituted, sanctioned, and legalized by the city to promote the city's ends, not to promote solely the ends of the consumer and the corporation. To enforce this principle, thorough-going regulation is necessary.

The city must protect its health. This it can do only through complete control over its water, light, heat, electric and allied public services. Unjustifiable over-crowding must be prevented. This can be done only by stern regulation of the city's transportation facilities. Street railways must not be allowed to increase land values in favored sections at the expense of community degeneration through over-crowding. Even where there is no immediate danger of over-crowding, the city cannot abdicate to its public utilities power to determine what urban real estate shall have value, and what real estate shall have no urban value at all. It has been stated that the increase in land values in northern Manhattan and the Bronx, due to the construction of the present subway, would not only have built the entire line, but would have equipped it, provided its rolling stock, built its power houses, paid all capital expenses, and left a margin. Why should not this increased value go in part to the public, as well as to the railway and its allied industrial concerns?

The community as a whole must have something to say about the direction in which it shall expand, whether into wholesome or unwholesome surroundings, whether into areas that will inhibit or promote future expansion. A sensible constructive city plan is the urgent present-day need of American cities. But city plans, unaccompanied by energetic control over the expansion of municipal utilities, will ever remain mere paper plans, to be

developed or neglected, as those utilities may see fit to determine. The public service corporations must be made to serve the future city, not to burden it. Herein lies the most potent reason for adequate public regulation.

There is no use side-stepping the fact that, in American cities, municipal utilities are too often the city's actual governing power. If the utilities cannot, unaided, dominate a city's governmental machinery, they dominate it through alliances with other interests, such as the liquor interests, vice interests, suburban development concerns, public contractors, and by liberal campaign contributions to the successful political party.

The motive that tempts municipal utility corporations thus to dominate the city government, is the valuable special privileges that they can thereby obtain at little cost. The temptation to secure these valuable franchise rights by resorting to bribery, or any other means of corruption, is too strong for the average corporation promoter to resist. Especially is it impossible to resist a temptation to put into city offices, through party machinery, men who will obey every command of the city's serving corporations.

Not only is there an ever-present and strong temptation to subsidize and dominate a city's governmental machinery in order to obtain franchise rights, but there is an equally strong temptation to keep it subsidized and dominated in order to secure the numerous advantages arising from a friendly interpretation and administration of franchise provisions. Obtaining franchises invites occasional corruption and municipal subversion; the interpretation and administration of those franchises invite permanent corruption and subversion. The company's first interest is to obtain a franchise that will give

it the best possible autonomy as to rates, service, and extensions: its next interest is to see that the city government interprets and administers that franchise in the way that the company would itself interpret and administer it. The battle that wins a good or a bad franchise is but an incident in the long struggle between a city's public needs and the greed of its serving corporations. Unfortunately it is the one on which public attention is almost wholly focused. But to the corporation it is not the most important struggle. To the corporation, the important thing is the daily interpretation and enforcement of the franchise it may thus secure. A lax or subservient city government may, by friendly interpretations and flaccid administration, completely change the terms of the contract. To the corporation lax enforcement means greater gains, and strict enforcement lessened profits. Hence, the public utilities keep themselves entrenched in the city's government and the city's courts, and throw the whole of their potent influence against vigorous enforcement and interpretation of their franchise contracts. So long as the same group of men runs the municipal government and also enforces franchises, these corporations will attempt to see to it that they maintain copper-riveted control over that group of men. They may not obtain and exercise this control so blatantly in the future as they have in the past, but their control will be none the less potent because they discard hob-nail and go pussy-foot.

Of all the malevolent results arising from prostrating the will of public officials to the will of utility officials, the least malevolent is that thereby rates are raised, service standards lowered, and extensions neglected. More malevolent and more pernicious than these are the results upon the efficiency and standards of the city gov-

ernment. City officials who are chosen primarily because they will minister to the needs and wishes of the city's serving corporations, will not be fitted by aptitude nor inclination to minister to the city's social and governmental needs. Under such a policy, fitness to govern is but a secondary consideration in making nominations to city positions. If by accident the city official possesses governmental fitness, he will deferentially yield to the corporation whenever there is a clash between the city's interests and the interests of the corporation. For this he was elected. So long as such a condition of peonage exists, effective city government is unthinkable. Efficient city government can be obtained only by placing first emphasis upon the ability and readiness of the city official to minister well and faithfully to the city's needs. The only way that this can be assured is to adopt a vigorous and competent method of regulating municipal utilities, that municipal utilities may be made to serve the city, not to rule it. Until this is done, municipal government will be inefficient and subservient.

Closely allied to this need for regulation, and separable from it only for the sake of emphasis, is the need of divorcing public utilities and political parties. Public service corporations have ever been the ward-heeler's most fruitful source for campaign contributions. The parties desire funds; the corporations desire protection; the alliance, known well to all, results. Indeed, the municipal utilities may contribute to both parties, and thus be sure that no candidates are nominated who are not "safe and sane." For instance, previous to 1905, members of both the Republican and Democratic committees in Syracuse, New York, maintained "spheres of influence" in the lighting and traction companies, and named the motormen and conductors and the other employees of these

utilities. The utilities in turn got all they wanted from the city. The situation of the Philadelphia Gas Works, when it was privately operated before 1887, is typical of the kind of alliance that is frequently made between the city's utilities and the city's officials. Prof. Leo S. Rowe, commenting upon that situation, says in his report to the National Civic Federation:[1] "The trustees of the Gas Works had, through the skillful use of patronage, gradually secured control of the local machine. They appointed their friends and dependents to the chief places under the trust, and required them to fill the ranks of even ordinary workmen with persons upon whom they could depend. These employees were expected to know all the voters in their districts; they attended and swayed the primaries, and when an election was held they canvassed and brought out the voters. Their power, therefore, went far beyond their mere voting strength, for 100 energetic workers meant at least a thousand votes." In this way the gas ring made itself indispensable to the Republican party in the city and commanded a majority in both the Common and the Select council.

To prevent such a subversion of our municipal institutions, there must be regulation of municipal utilities, and regulation of a kind that will tend to make unnecessary party and corporate alliances.

Another need for regulation is that our courts may be freed from many cumbersome cases, and thus be left free to perform the primary functions for which they were created. Our courts must not bear the whole burden of saving property from confiscation and of regulating utilities in the interests of the public. That burden should be borne by highly specialized and independent

[1] Report on Public Utilities, Part II, Vol. 1, page 502.

administrative tribunals that will devote all their time to utility problems. To freight our judges with duties foreign to their training and inclinations is to endanger them to the same kind of corporate dominance as has just been discussed for the city and the political party.

A leading and primary function of the municipality is the regulation of all the municipal utilities within its borders whose activities are at all affected with the public interest—and that includes them all. The adequate regulation of such concerns is the most pressing problem of the hour. The consumer, the corporation and the city cannot be left subject to exploitation, one by the other. This exploitation can be prevented only by the creation of a highly specialized regulative institution, isolated from other governmental machinery, that responsibility may be inescapably fixed, and that the other political institutions may not be dominated by influences foreign to their specific functions.

The interests of the individual that is served, of the company that does the serving, and of the organized community whose well-being depends entirely upon the efficiency and impartiality with which that service is rendered, all urge the adoption of a progressive and adequate policy of regulation.

CHAPTER II

MUNICIPAL OWNERSHIP VERSUS ADEQUATE REGULATION

All now seem to assent to the proposition that municipal utilities must be regulated. The point of difference is as to the method and extent of regulation. Methods of regulation may be roughly classed as (1) regulation by governmental authorities under private ownership of public utilities, and (2) governmental operation and ownership of such utilities. A more accurate statement of these two methods of regulation is that, in the first, there is centralization of regulation and diffusion of ownership, while in the second there is centralization of both regulation and ownership.

The forces that have made for the adoption of municipal ownership as a means of regulation are two. In the first place, drastic franchise provisions have made private ownership relatively unprofitable. In the second place, municipal ownership has been the only avenue open for the solution of the numerous and obnoxious ills that result from non-regulation. The first factor has not been a very potent one in the United States for the quite sufficient reason that American cities have never had the machinery by which franchise provisions could be adequately enforced. The administration and enforcement of franchises, in American cities, has been left to

the companies themselves. Save in the few states that have recently adopted public service commissions, no public official or body has had ample power to see that franchises are administered in the interests of the public and the consumer as well as in the interests of the public service corporation. We have naïvely assumed that franchises are self-executory. The result has been that our public service corporations have evaded or have neglected to enforce all the provisions of their franchises that protect the public, while strictly enforcing and favorably interpreting all the provisions of their franchises that "protect" the corporations. The inevitable result of such a scheme of franchise enforcement and non-enforcement is that the company's interests are always protected, the public's interests forever neglected. Hence, no matter how carefully a franchise is drawn, no matter how carefully it safeguards the public's interests, no matter how severely it appears to punish the neglect or refusal of the corporation to comply with its every provision, the corporation, as its sole executive and interpreter, may so administer and interpret it as to make it serve well the corporation, no matter how poorly it may chance to serve the public.

Such has not been the situation in European countries. In European municipalities special administrative machinery for the enforcement of franchises has long existed. Hence, private corporations conducting public utilities could not complacently neglect all such franchise provisions about extensions, rates, quality of service, etc., as they might choose to neglect. It is one thing to carefully safeguard public franchises; it is quite another thing to strictly enforce them. American cities have done only the former, and have not always done even that; European cities have done both. Hence, in

Europe the returns to such corporations have been so reduced as to make private ownership of certain utilities in certain cities relatively unprofitable. With competent regulation the exact rates of profit were known; hence, the city authorities tended to require lower rates or better service until the corporation's profits were reduced to a point where private ownership was not highly profitable. Unfortunately this adequate enforcement of franchise provisions was unnecessarily accompanied by short-term grants. Under short-term grants and low returns, private ownership became relatively unprofitable. Hence, there was a heavy movement toward municipal ownership. This is especially true of street railways in the United Kingdom. As Professor Rowe has pointed out,[1] these short-term franchises " made it difficult, if not impossible, for the British street railway companies to undertake improvements on a large scale. With each demand for the extension of the service to the suburban districts the question presented itself whether such extension could be made to pay, in view of the comparatively short duration of the franchise. Endless controversies arose between the municipalities and the companies, which finally forced a clear-cut issue—either to permit the companies wider freedom of action and longer franchise terms, or to accept the alternative of municipal ownership. The traditions of rigid public control over private companies were so strong, and the reluctance to grant long-term franchises so great, that municipal ownership was adopted as the only solution of the difficulty." Such situations led to a rapid adoption of public ownership. Thus, in January, 1894, there were about three public street railway systems in operation in the United

[1] "Problems of City Government," page 225.

Kingdom; in March, 1906, there were one hundred and twenty-three. That is, from 1894 to 1906, the number of publicly-owned street railway systems had increased from two to forty-nine per cent. of the whole number of tramways in the United Kingdom.

It is needless to say that the potent force making for municipal ownership in this country has not been the reduction of profits due to virile enforcement of franchise provisions. The tendency toward municipal ownership in this country has been due almost solely to the fact that municipal ownership has been the only weapon with which the American city could successfully abate the evils necessarily arising from having its most important public needs and service performed by corporations over which it had no effective means of control. These corporations carried on their operations solely on the principle of the greatest maximum return to the corporations. The interests of the city demanded that the welfare of the public should have equal consideration with the corporation. Having at hand no other instrument for securing such consideration, the American city has been compelled either to let those interests go unprotected, or to protect them through municipal ownership and operation. That is, in American cities, municipal ownership has been adopted because it was the only means by which the public's interest could be adequately safeguarded.

The following chapter on the Minneapolis Gas Settlement aptly illustrates the use that a city can make of its power to provide for itself its own public services. The same fact is brought out by Honorable James H. Head, formerly Mayor of Nashville, Tennessee, in an article entitled, "One Mayor's Experience," published in the *Proceedings* for the National Municipal League

for 1906. In recounting his experience in endeavoring to get adequate service from the city's public utility corporations, Mayor Head, in part, said:

The next proposition that I had to contend with was to meet the electric light company. I found the electric light company with a contract with the city for ten years, about five years of which had expired. They supplied the city with lights at eighty-five dollars per arc light per annum. They were charging the people of the city eighteen cents per kilowatt for electricity, both of which charges I regarded as extortionate. I went to the company and asked for a readjustment, and the cancellation of their contract with the city. I was laughed at. No consideration was given to me, and I was again up against a serious proposition. Fortunately, however, in looking back through the acts of the Legislature, I found authority for the city to issue one hundred and fifty thousand dollars of bonds, to buy or build an electric light plant to light the streets, but with no power to sell electricity to private consumers—simply to light the public buildings and streets of the city. The Legislature assembled in 1901, and I concluded that I would ask the Legislature to amend the city charter and give the city the power to sell electric light, heat, and power to private consumers. It was a matter in which no one was concerned but the people of Nashville. The City Council unanimously endorsed it. The people of Nashville were practically unanimous for it, all except those interested in public service corporations, and I went before the Legislature thinking I would have no trouble. I had the fight of my life. Every corporate influence in Tennessee was represented before that Legislature with its personal, financial and other influences to defeat that bill and prevent the city of Nashville from acquiring that little right to sell electric light, heat, and power to private consumers. I spent nearly my entire time during the session of the Legislature trying to secure that right for the city.

Finally I succeeded by a very close vote. After acquiring that power, I again endeavored to readjust the contract which the private company had with the city. They refused, and I immediately undertook the building of an electric light plant. By the time the foundations of that electric light plant were laid, the private company came forward and voluntarily (?) reduced the price of electricity to private consumers from eighteen cents to twelve cents per kilowatt. Before the plant was completed, the private company was making every contract it possibly could with private consumers for a term of years at five and six cents per kilowatt. When the plant was completed, there were about three years of their contract with the city unexpired.

I went to the representatives of the private company and told them that the city was now ready to engage in the electric light business, and wanted to know what they would do. At first they would do nothing. But finally they concluded that the contract with the city did not pay them anything, anyway; that it was an expense to them, and that they had a demand for all of the light and power that their plant could furnish, and, if I wanted to, I could take over the lighting of the streets and public buildings of the city. So, on the first of September, 1902, the city took over the lighting of its public streets. For the year prior to that, the city had paid $49,270 for lighting its streets and public buildings.

For the year after the city took charge of its lighting it furnished to the city more than double the amount of light that it had previously had at a cost of $33,500. The cost of producing electricity, including operating expenses, interest upon bonds, repairs, improvements and everything except an estimate for the depreciation of the plant, was, for the first year, a little over two and one-half cents per kilowatt, and it is being produced to-day at about 2.10 cents per kilowatt.

When the private company agreed that the city could take over the lighting of its streets and public buildings, I agreed with them as Mayor that, during the remainder of my

term of office, the city would not engage in any private business, provided the company continued to furnish electricity at the prices they were then charging. I understand that since my retirement from office, that agreement has been kept. The lighting company is making more money to-day than it did when it charged eighteen cents. The city is lighting its streets and public buildings and is not engaging in private work. But if the city had never turned a wheel of that plant, costing $150,000, it would more than have paid for itself in three years in the reduction that it obtained for the private consumers of the city in the price of electricity. It could afford to keep that plant standing idle, and never turn a wheel, and it would save to the people the interest upon the investment ten times over every year.

Municipal ownership was the only means by which Mayor Head could adequately protect the interests of the public. He had either to leave those interests unprotected or resort to municipal ownership. Such has been the only alternative open to the average city, and even this alternative, sad to relate, many an American city has not and does not possess. Thus the rôle of municipal ownership has been and still is a most important one. It is, so to speak, "the gun behind the door." Its importance has long been recognized by the National Municipal League, and many pages of its Proceedings are given over to the consideration of its merits and demerits. Among these papers is one by Charles Richardson, which gives, among other things, a splendid résumé of the arguments for and against municipal ownership.[1] This résumé is so pointed and yet so inclusive as to be worthy of reproduction in its entirety. It was as follows:

[1] See *Proceedings* of the National Municipal League for 1898. The article is entitled "Municipal Franchises."

The methods which have been most advocated for the management of municipal properties and services may be classified under two heads, viz.:

Those which are equivalent to a lease for a period of years, and

Those which involve the direct control and operation by the local government.

The principal arguments in favor of the lease system may be stated briefly as follows:

First: That it is the quickest and easiest method for a city to obtain large sums of money or large annual revenues without borrowing, and that the success of this method will be in proportion to the length of the periods for which the franchises are granted.

Second: That with city management there is sure to be a great deal of fraud and corruption in the procurement of labor and materials.

Third: That municipal officials and legislators are so generally ignorant, negligent or corrupt that they are incapable of conducting public business with intelligence, efficiency and economy.

Fourth: That by carefully drawn leases and agreements the city's interests can be fully protected and its revenue assured and increased.

Fifth: That under our form of government the requirements of party politics and the frequent changing of public employees make it impossible for the people to secure as good service at as reasonable rates as a private corporation.

Sixth: That under municipal operation the employees and patronage will be used for political, partisan, or factional purposes to such an extent that the spoils system will be greatly strengthened, and it will become much more difficult for the people to overthrow a political machine.

The advocates of municipal ownership and operation reply to these arguments:

First: That even if we should ignore the influence of a full treasury in encouraging folly and extravagance, it would

still be true that neither the raising of money nor obtaining an income can justify a city in depriving its citizens and their posterity of the control of matters essential for their own service and protection, or in selling important privileges for much less than they are worth, or in granting them to persons whose private interests will thus be made adverse to those of the public.

Second: That as such arrangements are practically certain to be unfair to the city, the evils which they will inflict upon the people will be much greater if the grants are made for long periods than if they were limited to short terms.

Third: That in aggregate amounts and in multiplicity and variety of direct and indirect methods, the bribery and corruption chargeable to corporations seeking and enjoying municipal franchises are undoubtedly far in excess of the totals of similar evils from all other sources combined, and that the way to abolish bribery is to abolish the corporations which do the bribing, by adopting the policy of municipal operation in every conceivable case.

Fourth: That if the city's representatives are unfit to conduct a business from year to year, it would be the height of folly to entrust them with the vastly more difficult and responsible task of selecting and installing a management which could not be changed for a long period of years.

Fifth: That in making a lease for fifty years the bribes are much larger, and the necessity for expert knowledge, shrewdness, sagacity, foresight and honesty is much greater, so that the damage resulting from the lack of suitable qualifications in the city's representatives is likely to be very much more than fifty times what it may be under a management that is limited to a single year and can then be changed by the voters if it is unsatisfactory.

Sixth: That under the existing conditions the chances of any city's obtaining a fifty-year or other long-term agreement which will be entirely fair and desirable for the people, or of securing what might be even more difficult, a full

and satisfactory enforcement of such an agreement if one could be made, seem to be too slight for serious consideration.

Seventh: That even if it was practicable to secure an agreement and its continuous enforcement, its effect upon the character of the local government must necessarily be exceedingly injurious. A bad servant who can be dismissed is much better than a master from whom it is impossible to escape. Republican institutions are based upon the principle that the people should have the power to change their rulers without resorting to assassination or revolution, and a long lease of an important municipal service is simply the substitution of a limited monarchy for a popular government, so far as it relates to that particular function.

Eighth: That as the character of every Republican government must depend in the last analysis upon the active interest of the voters, it is obvious that every lease or agreement which ties the hands of the local government and lessens its ability to serve and protect the voters must tend to diminish their interest in supporting or improving it. While it is not possible to strip a city government so entirely of power as to make it incapable of attracting the efforts or serving the purposes of bad men, it is possible to render it so powerless to accomplish good or restrain evil that the average citizen can no longer be induced to take an active interest in it.

The merits of municipal ownership, however, do not have to depend for their demonstration upon arguments only. It has been amply justified in the experience of both European and American cities.

Its success in continental cities has long been known to all. As to its success there it will suffice to submit here statements only as to (1) its success in gas and electric lighting in British cities; (2) the financial result of Glasgow's tramway for the year ending May 31, 1910,

and (3) the results obtained in the current year for the four largest municipally owned plants in Nottingham.

Speaking of the results obtained by municipal gas and electric plants in British cities, Mr. John Martin of New York City, in a paper read before the National Municipal League in 1905, said in part:[1]

But you will ask, Do the results show that the management of these undertakings has been accompanied by the notions of business efficiency, resulting in low prices, good dividends, and high wages, which we expect, but don't always get, from private undertakings? With the cogency of a proposition in Euclid, they do.

For refreshment and solace, listen to a few figures. Figures, I know, like spirit photographs, sometimes deceive; but mine shall be so simple that even an investor in the ship-building trust could not be misled by them. The statistics I shall quote are vouched for by the British Board of Trade, a body as dignified and impeccable as the Supreme Court. Uniform municipal accounting, the goal for which one of your committees pants, has been reached in these business undertakings in the United Kingdom. No financial juggling is possible.

No less than 260 cities supply their whole population with gaslight and power, having invested over $185,000,000 in the works—a sum so large that I fear the ship-building investor will not grasp it. They charge on an average, taking large and small, those distant from and those near to coal fields all together, sixty-four cents a thousand cubic feet for gas. Therefore the consumer is benefited, for the private companies, on an average taken in the same way, charge a little over seventy cents. What they would charge were they not held in check by municipal competition, Cousin Jonathan could tell John Bull.

[1] *Proceedings* of the New York Conference on Good City Government, 1905, page 154.

Has the taxpayer been mulcted to make up? No, indeed. The net revenue has been 7 per cent. on the capital, and, if anything, the taxpayer has been too well cared for. In Manchester he received $350,000 last year to help to pay for the schools, etc., the price of gas being sixty cents; in Leicester he got $190,000 with gas at fifty-six cents, and in the other places lesser sums in proportion to their size and the success of the management.

And the workman? He has not been forgotten; for everywhere he gets slightly higher wages than he would from a private corporation and somewhat more generous treatment with respect to hours and holidays.

Electric lighting tells the same tale. While I am writing this, there comes a return compiled by the London County Council showing that the fourteen local authorities in the metropolitan district which supply electric light sell it at an average of slightly less than eight cents a kilowatt hour, nearly 20 per cent. less than corporations charge in adjacent districts, and nearly half as much as submissive New Yorkers pay. And yet, after paying all expenses and the interest on the debt, they had a surplus of $1,244,515. Clearly they understand the notion of thrift in production.

The Glasgow tramway, owned and operated by the city, in the year ending May 13, 1911, as shown in the following excerpts from an official report, put 9.04 per cent. of its total receipts into a sinking fund, put 20.4 per cent. more of it into depreciation and permanent way renewal funds, and yet charged an average fare of not quite two cents per passenger, or at the rate of not quite one cent per mile:

THE GLASGOW TRAMWAYS UNDERTAKING

For Year Ending May 31st, 1911.[1]

Capital expenditure to that date	£3,503,173
Total sinking fund to date	608,147
Ordinary income for year	949,488
Working expenses for year	533,178
Net revenue	£416,309
The net balance paid into the "Common Good" was,	68,678

Sinking fund for the year, £89,794 or 9.04% of total receipts.

Depreciation fund, £117,129
Permanent way renewals fund, £85,499 } 20.40% of total receipts

The average fare charged per mile was	.46d.
The average fare paid per passenger was	.954d

The following official report, prepared by one of the city auditors of Nottingham, England, and published in the *Municipal Journal* of November 11, 1911, shows that, while setting aside large reserve, sinking, and depreciation funds, and liberally aiding the municipal treasury, the city's four leading municipally owned plants still made an average profit of 8.97 per cent. on the capital invested. The report is for the year 1910-11:

[1] *Municipal Journal.* Vol. XX. September 23, 1911.

RESULTS OBTAINED FOR THE YEAR 1910–1911 [1]

BY THE FOUR LARGE MUNICIPALLY OWNED AND OPERATED DEPARTMENTS OF NOTTINGHAM, ENGLAND

Departments.	Consolidated Stock and Loans Invested.			Gross Profit for Year.			Per Cent. on Capital.	Interest on Capital.			In aid of General District Rate.	Set Apart to Reserve Sinking and Depreciation Funds.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	£	s.	d.
Gas.....	1,093,983	10	7	104,558	2	6	9.56	44,362	9	6	32,000	28,195	13	0
Tramways..	461,738	17	10	53,204	2	9	11.52	15,564	7	5	15,000	22,639	15	4
Electricity..	332,444	18	11	42,872	2	8	12.90	12,708	14	8	15,350	14,896	17	10
Totals....	1,888,167	7	4	200,634	7	11	10.66	72,635	11	7	62,350	65,732	6	2
Water.....	1,237,411	4	4	79,880	8	8	6.46	45,391	3	10	.....	34,489	4	10
Totals....	3,125,578	11	8	280,514	16	7	8.97	118,026	15	5	62,350	100,221	11	0

[1] *Municipal Journal*, November 11, 1911, p. 1066.

Municipal ownership in the United States is of relatively recent origin. Not until 1854 did Chicago own its own water plant; Cleveland followed in 1856 and Minneapolis in 1871. Wheeling adopted municipal ownership of its gas plant in 1851, Norfolk in 1854, and Atlanta in 1855. The first municipally owned and operated electric plant was Chicago's, which began operation on December 24, 1887. Detroit followed on April 1, 1895. Although of comparatively recent origin, municipal ownership in the United States has also, as a rule, been highly successful. The National Municipal League at its Annual Meeting in 1906 devoted a large part of its deliberations to the consideration of municipal ownership. Many papers were presented giving in detail the results of municipal ownership in different cities. These papers cannot, for want of space, be reproduced here. As a whole they tended to establish the success of municipal ownership and operation. The following excerpts from three of them must suffice to show the character and nature of the all but unanimous testimony that was offered in behalf of the successfulness of municipally owned plants.

Speaking of "Municipal Operation in Duluth, Minnesota," Mr. L. M. Case of that city said:

The water and gas plants were purchased by the city August 1st, 1898, from the private company operating them. Previous to that time the rates for water were by meter 37½ cents per 100 feet for ordinary consumption, and for families on flat rate $9.00 in five rooms, and $1.00 for each room in excess: for bath each $5.00, water closets each $5.00 and wash basins $4.00 each. This will be sufficient of the schedule for comparison.

Rates for gas were: Net lighting $1.90, and $1.00 for fuel. The amount of "gas sold" the year the city bought

the plant was twenty million feet, in round numbers. For some time previous to the purchase a great and growing discontent pervaded all classes, not only with the character of the service rendered, but also with the quality of the water furnished. . . .

Now, briefly, as to the results of municipal operation of the two plants. The service is improved at least to this extent: no discriminations exist as to charges, discounts, rebates, etc., etc. In other words: The principle of "equal rights to all and special privileges to none" is rigidly maintained. Gradual but continuous reductions in rates have been made, regulated simply by the amount of reduction that the surplus earnings would permit, without any regard, up to the present time, of the obligation resting upon the city of providing a fund for the redemption of the bonds. The main endeavor so far has been to get the water rates down to a point where they would cease to be burdensome, and as to the gas to make it so cheap that the people could not afford to use electric light or coal for cooking.

The result as to the quantity of gas sold is almost phenomenal. Last year over 110 million feet were sold, and that of January last was 53⅗ per cent. increase over that of January, 1905.

The present water rates are: 17½ cents per 100 feet for ordinary consumption, with flat rates for families $6.00 per annum in five rooms, with 50 cents each additional room; bath tubs, water closets and wash basins, $2.00 each; less than one-half those of the company.

Gas, 75 cents net for all consumption, excepting for heating of premises and gas engines, which is 50 cents.

The interest on the supplementary system, which is the price Duluth has paid for its pure and wholesome water, and which is additional to the cost of its supply by the private company, aggregates, in the seven years of operation, $386,800. Reduction of rates, both water and gas, aggregate on January 1st, 1906, $630,961.99. The accumulated savings

of the board, most of which have been invested in new extensions, aggregate $121,181.25.

As a loss or partial offset to these benefits the department received from the tax levy an aggregate of $65,206.29, provided in the city charter at a half mill rate, "to be used exclusively in the reduction of water rates." The taxes voided by the purchase aggregate $116,651.65 to January 1, 1906. The subsequent purchase of the West Duluth water plant for $140,000 voided a possible water rate from the private company of $15,000 for three years. This leaves a balance of $942,085.30, which is the aggregate result in cash profits to the people of Duluth during the seven years' operation of the plants.

After showing that municipal ownership had not only materially reduced rates, but had also brought large profits to the city, Mr. J. M. Barrs, City Attorney of Jacksonville, concluded a paper upon "Municipal Ownership in Jacksonville, Florida," with these paragraphs:

With the tremendous growth of profits to the city from the operation of the waterworks and electric plants has grown up the idea that, if the city also owned and operated its street railroad, gas works and telephone exchange with the same success which has attended municipal operation of waterworks and electric plants, these public utilities could be furnished to the citizens at very small cost compared with the cost when furnished by private companies and still abolish all direct taxation.

About the only difference of opinion now existing among the friends of municipal ownership exists over the question as to whether the price of water and electricity should be much reduced below the present very low prices, thereby relieving the users of water and electricity to the extent of the reductions, or should the large profits from these public utilities be used by the city for public improvements. So far, owing to the very rapid growth of the City of Jackson-

ville, the profits can be very profitably used by the city in public improvements.

Mr. Frederick F. Ingram, previously the President of the Public Lighting Commission of Detroit, in a paper upon "Municipal Operations in Detroit," said that by owning its lighting plant, Detroit had not only secured lower rates, but had profited in many other ways. He said:

For instance, this service has been taken out of politics, but few changes in the personnel of the working force occur, appointments and promotions depend on merit, while city politics is freed from the corrupting influence of political deals, so far as the public lighting service is concerned.

My personal views are, that cities should own and operate all public utilities within their boundaries without any qualifications or exceptions whatever. Without reference to a city's inability to acquire or exercise ownership, there should be in such a city no farther franchise grants whatever.

A well-governed city must be a self-governed city. Self-government is impossible if the people's control is weakened and made ineffective through grants of government functions to private corporations. The private corporations under such circumstances of necessity must either govern the city or practically destroy its government in so far as a government is a reflection of the wishes or aspirations or average morality of the citizens.

There cannot be efficient city government with public utilities in private hands. The first consideration should be, to get them out of private hands, when other reforms will be possible. As in European cities under such improved conditions, city governments here will become more efficient and less corrupt. Fighting inefficiency and corruption will be a losing battle so long as the governmental functions of municipalities are divided between the municipality and private corporations.

Evidence from numerous other sources and cities tend to point to the same conclusion. For instance, Los Angeles, which resumed control of its water system in February, 1902, in addition to paying out of its water rents the accruing principal and interest of the bonds issued for the repurchase of the water works, has rebuilt the entire water system, has purchased additional sources of water supply, and has extended its water mains to meet the demands of a two hundred per cent. growth in population. In addition the plant, under municipal ownership, has shown large profits. In 1902 it made, above expenses, in round figures, $408,000; in 1903, $537,000; in 1904, $664,000; in 1905, $758,000; in 1906, $819,000; in 1907, $866,000; in 1908, $902,000, and, in the period from November 30, 1908, to June 30, 1909, when a charter amendment changed the fiscal year so that it ends in June instead of November, it earned $474,000.

Municipal ownership in the United States, as in Europe, has met with no small meed of success. Its success has been all the more pronounced here, indeed, because it has to be contrasted with rates, service and results obtained by unregulated private concerns.

To be sure there have also been many seeming failures of municipal ownership. These failures, however, may be traced in every instance either to a complex machinery that permits such diffusion of responsibility as to make efficiency impossible or to the fact that the plant was actually owned, not by the public, but by a "clique" that controlled the city's government.

Among the alleged failures, for instance, was the City Lighting Plant of Allegheny, Pennsylvania. Examination reveals, however, that the superintendent of the plant was administratively responsible to all the following men or groups of men: (1) to the Director of

Public Works; (2) to the Mayor; (3) to the joint Finance Committee of the Council, composed of four members of the Select Council and twelve members of the Common Council; (4) to the Public Works Committee, composed of six members of the Select and twelve members of the Common Council; (5) to this Committee's Sub-committee on Lighting, composed of two members of the Select and four members of the Common Council; (6) to the fifteen members of the Select Council as a unit; (7) to the Common Council as a unit; and (8) to the Council as a whole! Is it any wonder that the plant was a failure? Is it any wonder that it came to be the football of politics? But was it municipal ownership *per se* that failed, or was it this method of administering municipal ownership that failed?

Other failures of municipal ownership are to be set down to the exploitation of the city by the few that control the city's governmental machinery. There is a distinction between governmental ownership and public ownership. Governmental ownership is not public ownership unless the people own the government. Among the failures of municipal ownership that may be ascribed to governmental ownership as distinct from public ownership are the Municipal Gas Works of Wheeling and of Philadelphia. In neither city was there actual public ownership of the plant in question. In Wheeling the Gas Works was conducted by a board of Gas Trustees appointed and controlled by the City Council. In order to subvert the state policy of restrictive legislation as to saloons, brewery and saloon interests united to control the Council. This was made easy because a large per cent. of the population was of German descent. The largest brewery proprietor was also a leading stockholder in a leading bank and the principal owner of one of the

two street car systems. He and his associates were also interested in a local telephone company and were affiliated with the interests controlling the Electric Light Company and the Natural Gas Company. This combination of liquor and franchise interests always ruled through the City Council. Positions in the Municipal Gas Plant were given as a reward for political subserviency. Indeed the superintendent of the Gas Works, as Republican Committeeman, actually dominated the Board of Gas Trustees—presumably his master. It is needless to add that the gas plant was not a great financial success.[1] In discussing the situation in Philadelphia when that city was owning and operating its Gas Plant, Professor Rowe has said:[2] "The pay rolls were burdened with large numbers of incompetents whose only recommendation was that they lived in a certain ward and were party friends to men powerful in politics. . . . The average wage paid at the works was $1.75 per day, although the Director of Public Works declared that he could obtain equally competent men for $1.25. This policy of paying fifty cents a day above the market value of labor involved an additional annual expense of $275,000." Of course, under such circumstances industrial competency in both cities was impossible. But in each case the failure was due to nothing inherently bad in municipal ownership, but to "ring" domination of every municipal interest. The streets were as poorly cleaned as the public utilities were badly operated.

It has not been these instances of failure, however,

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[1] Report of the Civic Federation on Municipal and Private Operation of Public Utilities, part 2, Vol I, page 491.

[2] Ibid., page 603.

that have been the chief obstacle to the wider adoption of municipal ownership in the United States. The main obstacle to a more rapid adoption of municipal ownership in the United States in its earlier history was the narrow canon of interpretation adopted by American courts as to the powers municipalities could exercise. This canon was that a city could exercise only those powers expressly enumerated to it by the State Legislature or the State Constitution. This meant that no city could have the power to own and operate any one or all of its public utilities unless the State Legislature or Constitution had specifically given it this power, and this the average municipal code and State Constitution did not do. Hence only the few cities to which this power had happily been expressly granted could adopt municipal ownership. Our State Legislatures have been very slow in extending to municipalities plenary powers in this field.

Not nearly all our cities, perchance not half of them, have even yet succeeded in getting this power in full. But the tendency to grant it to them has been most pronounced in the last two decades. Accompanying this tendency has been a willingness on the part of the courts in some of our states to overthrow the principle that the power must be expressly given and accept the doctrine that it may be implied. For instance, the Missouri Supreme Court in 1891 (178 Mo. 555, City of Crawfordsville v. Braden) held that the right of a city to own and operate its public utilities was implied in its "power to enact and enforce reasonable by-laws and ordinances for the protection of health, life and property." In a similar decision, the Wisconsin Supreme Court (Ellinwood v. Reedsburg, 91 Wis., 131) held that "it is not necessary to seek for an expressed delegation

of power to the city to build a water works and an electric lighting plant, because the power expressly granted to the city to pass ordinances for the preservation of the public health and the general welfare includes the power to use the usual means of carrying out such powers, which includes municipal water and lighting services." The courts of other states also have held that the power to adopt municipal ownership could be implied from the general grants of power such as those to provide for the general welfare and to further "municipal purposes." The Supreme Court of North Carolina[1] in speaking of the relation of the court to the matter of municipal ownership said: "It would seem, however, that the city ownership of water as well as an electric lighting plant is a matter vested in the discretion of the city government. Light and water, sewerage and sanitation, paving and fire protection are necessities, and are objects to be obtained by municipal organization. . . . The general movement of the age in which we live is toward the ownership and operation of these franchises by the people of towns and cities, for themselves, through the agency of their municipal corporations, as one of the recognized and chief purposes of town and city charters."

However, while there is thus a decided tendency to allow and grant to cities the right to municipal ownership, too many of our cities still do not have the right. This omission should be at once corrected by the adoption of the needed constitutional provisions and statutes. The best interests of all our municipalities

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[1] In the case of Mayo v. Washington, 122 N. C., 5, decided in 1898 in a dissenting opinion by Justice Clark, later expressly upheld by the Court in the case of Fawcett v. Mt. Airy, 134 N. C., 125.

demand that our cities have the unquestioned right to adopt municipal ownership at their pleasure.

Another factor which has prevented a more rapid spread of municipal ownership in the United States has been the limit placed by State Constitutions and statutes upon the total debt that municipalities may incur. This limit has been so low as to make municipal ownership practically impossible. And thus our cities have been left unable to defend themselves against the greed of the persons and corporations that supply their public services. Happily the fallacy of thus restricting the city's power to protect itself no longer finds universal acceptance. In all parts of the United States cities are receiving greater financial freedom. In 1903, Illinois, by statute, provided for the issue of interest bearing street railway certificates in lieu of bonds for the purchase of street railways by the city of Chicago. These certificates are secured by a mortgage on the plant, involve no general liability to the city, and hence cannot properly be counted in estimating the amount of debt permissible under the constitutional debt limit. Missouri, in 1905, and Iowa, in 1906, passed somewhat similar acts relating to the acquisition of water works. In 1907, Wisconsin passed the same kind of a law as to municipal railway terminals in cities of the first class. In the same year, Minnesota provided by statute for the issuance of certificates in lieu of bonds for the purchase and construction of any and all municipal utilities. In the autumn of 1909, the people of New York State adopted a constitutional amendment allowing New York City to exclude from the computation of the city's debt limit all bonds issued for purposes which produce revenues in excess of maintenance. In the November election in Pennsylvania, in 1911, a constitutional amendment was

passed allowing Philadelphia to increase her debt limit. These statutes and amendments are indicative of a most wholesome and praiseworthy tendency. It is to be hoped that the movement will continue to spread until no American city is unreasonably restrained from advancing the public good by municipal ownership, because of some "bogy" provision about debt limits.

Even in those cities which unquestionably possess the right to own and operate their own utilities, and which also have no debt limit that will automatically inhibit all such undertakings, the process by which municipal ownership and operation must be adopted has sometimes been made so complex or so wholly subject to the veto of those whose interests will not be furthered by municipal ownership, as to make municipal ownership and operation practically an impossibility.

The procedure in Denver's Home Rule Charter illustrates both these methods of thwarting the city's power to acquire any or all of its public utilities. Denver's first Home Rule Charter Convention was controlled by those desirous of regulating the city's utilities in the interests of the public as well as solely in the interests of the serving corporations. Hence the Charter framed in this Convention made municipal ownership easy. It was consequently opposed at the polls by the city's utility corporations and was defeated—counted out, say many competent observers. The succeeding Charter Convention was controlled by those willing to allow the city's government to continue under the control of political party and utility corporations. The Charter framed by this Convention, the existing Charter, made municipal ownership so difficult as to be directly impossible. To be specific the Charter gives severally to the mayor, the city attorney, and the Board of Public Works, power

to veto any and all plans for municipal ownership. To be more specific, in the first place the procedure for " the acquisition of any public utility work or way " can be initiated only by " a petition signed by twenty-five per cent. of the next preceding vote for mayor." This petition, if adequate, is then presented to the council. The council thereupon directs the Board of Public Utilities, a Board whose every duty and self interest makes it opposed to municipal ownership, " to investigate the feasibility of the acquisition of such public utility, work, or way, all costs and expenses which would be incurred by such acquisition . . . whether and how such public utility, work, or way may be acquired," and whether " it can be operated by the city and county at a profit or advantage." If, as a result of this investigation, the Board should by any chance become convinced that city ownership of the utility in question was advisable, it may then, if it chooses, report " to the mayor and council, in writing, its findings in the premises, together with all the data on which such findings are based, with sufficient particularity that the mayor and council may judge of the correctness of such findings." If the proposition runs successfully the gauntlet of both the mayor and the council, it is then presented to the city-attorney. If he, too, has succumbed to the siren of public ownership, the city may then acquire the utility in question PROVIDED! that the mayor again endorses his concurrence, the Board of Public Works draws up the needed specifications, the council passes the required ordinances, and these ordinances are adopted by a majority of the " taxpaying electors who shall have paid taxes in the calendar year next preceding," and the bonds issued therefore are sold at *not less than par!*

The mere recital of this routine is in itself sufficient

to reveal that it was put into the Charter not to *safeguard* municipal ownership but to make it *impossible.* The procedure is so complex and the proposition is subject to the veto of so many different officials and official bodies, all of whom have since been successfully dominated by the utility trust, that it is a very easy matter to shunt off all attempts at municipal ownership.

To be sure, the process for acquiring city ownership must be safeguarded, but it must not be safeguarded with such care as to make it impossible, nor should it be subject to the veto of the very concerns which are naturally opposed to it. The process should be simple and direct so that the city may take over the ownership and operation of any given utility whenever the electorate of the city so demands.

A simple and direct method by which the city may acquire the ownership of its utilities is essential in order that it may meet its public utility companies on a fair basis. Unless both the city and the corporation are fully aware that the city can with relative ease and at any time dispense with private ownership and build and operate its own utilities, utility corporations will always have the upper hand in drawing up and enforcing franchise contracts. The city may never deem it expedient to exercise this power, but the power, nevertheless, must be in reserve. In no other way can the city get adequate terms from its serving companies.

Under a scheme of competent regulation, such as is outlined in the succeeding chapters, the municipality will probably rarely, if ever, have occasion for resorting to municipal ownership and operation. In New York and Wisconsin, where virile public service commissions have been longest in operation, there has been little or no desire on the part of the municipalities to turn to muni-

cipal ownership. Under such a scheme of regulation the city becomes, in effect, a partner in the concern and hence is able adequately to protect the public's interests. But the keynote to the success of this very scheme of regulation is the unequivocal right of the city to acquire, construct, maintain, lease, and operate any and all of its public utilities. This right should, first of all, be granted in no uncertain terms in the state constitution and be specifically provided for in the state statutes. It should then be carefully guarded in every franchise granted by the city. In this way and in this way only can the city be sure that its public utilities will serve it, not burden it.

Nor is it sufficient that the city merely reserve to itself the right either to purchase and operate any given utility or to transfer the utility to a new grantee upon the payment of the purchase price. The franchise must go farther and contain provisions for sinking and amortization funds which will be gradually amassed out of earnings so that, at the end of the franchise period, the city will have available, without any bond issues, all the funds necessary for the purchase of the plant. With such a fund in existence municipal ownership is an actual alternative. Should the city not desire to undertake the ownership and operation of the utility, the fund can be used in liquidating the debts of the corporation concerned so that it may start out on its new tenure free from old financial obligations. Under such circumstances the city can readily and justly require greater returns from the corporation in the way of extensions, lower rates, or better services.

The public interest cogently necessitates that the debt that is represented by public utilities, if they are owned by the city, or their capitalization, if they are owned by private companies, be kept down to the minimum. Other-

wise the city will find itself less and less able instead of more and more able, as time goes on, to take over the ownership and operation of such of its utilities as the public interest may acquire. Hence the purchase clause of the franchise must be carefully drawn. If the corporation can pile up capitalization without let or hindrance, and then compel the city to buy, if it buys at all, at this capitalization, the corporation has, in effect, full power to veto any and all attempts at public ownership, thereby making the purchase clause wholly valueless as a means of franchise enforcement. If the purchase price is fixed beforehand, the corporation, after helping itself to liberal dividends, will allow its plant to go into such a ramshackle condition that the city cannot afford to take it over. In order to be master of the situation, the city must be able to keep the debt of publicly owned utilities, and the capitalization of private utilities, down to the minimum and then also create through current earnings sufficient funds to amortize this debt of capitalization. This can be done only through uniform and scientific accounting and through the adoption of all the rest of the machinery for control described in succeeding chapters on public service commissions.

It was the purpose of the earlier pages of this chapter to show that city governments were not incapable of managing industrial concerns. However, there is no desire to blink the fact that municipal ownership is fraught with certain definite evils and dangers. To be sure, these evils are not so great as are the evils resulting from non-regulation, but they are sufficiently great to warrant serious consideration of the relative merits, not of municipal ownership and non-regulated private ownership, but of the relative merits of municipal ownership and thorough-going, scientific regulation of private

ownership. Is it not possible to evolve a method of control that will retain all the regulative advantages of municipal ownership and also retain the unquestioned advantages of private ownership and operation? To the author's mind such a method of control is afforded through expert public service commissions. By such means regulation may be made so effective as to do away with the abuses of private ownership while still retaining many of its advantages. In other words, regulation through the centralization of control and the decentralization of ownership has all of the advantages and none of the disadvantages of the centralization of ownership, operation and control in the hands of city officials.

In the first place municipal ownership trebles the already complicated problems of managing municipal utilities. To the problems of regulation, it adds all the problems of proprietorship, and all the problems of operation. Under municipal ownership the city official is laden with the three-fold problems of owner, consumer and public. Regulation, as distinct from ownership, has in the main to do with public problems only. Hence it is more simple and consequently more efficient. Centralization of control with diffusion of ownership places upon the public official, in the main, only the problems of service and leaves to the owner the problems of proprietorship and operation. To place upon the public official the problems not only of service but also of operation and proprietorship is to overburden him and consequently to make him inefficient. Neglect or under emphasis of the problems of service, or of proprietorship, or of operation are sure to follow. The chief dangers are that the problems of proprietorship will be neglected, capital invested will not be economically used, depreciation funds will not be formed, the plant will be allowed to get into a rundown

condition, and old inefficient methods of operation will not be displaced by new and efficient methods.

In the second place, municipal ownership will dispense with none of the machinery necessary for adequate regulation, and will require added expenses incident to administering the problems of proprietorship and of operation. Under private ownership these two latter services are compensated out of profits. In all probability, the city's expenses in these two fields will be greater than the profits amounted to. This will be true because of the pressure for shorter hours for the laborer, for "political jobs," and "government snaps," for the party worker, and for cheap rates to the ordinary consumer. Those who serve the public are not wont to be as efficient agents as those who serve private owners. There can be no doubt that the expense of proprietorship and of operation will be greater in public than in private ownership. If the public can be adequately protected by regulation, there is no justification for this added expense.

In the third place, the expense of regulation will be no less under municipal ownership and operation than it is under private ownership and operation. Public ownership and operation does not dispense with the necessity for regulation. The problems remain the same as under private operation. Under both there must be economy, efficiency, and fidelity. The two arms of administration by which these qualities are obtained are inspection and scientific accounting. When the Wisconsin Commission investigated the books of municipal plants, it found that books were kept by but few, and that, in the main, the only memoranda were check book stubs. The bookkeeping affairs of one municipal plant were kept in a vest-pocket account book, tied with a woolen string. A majority of the municipal plants re-

ceived no credit for the service rendered to the city. The revenue went into the general fund and when there was an expense the city made an appropriation. Business system was unknown. The accounts of municipal plants are in the same need of efficient supervisions as the accounts of private plants, and for the same reason: In no other way can competent public service be assured. Slipshod accounting methods and political financial reports may cover up the real cost of utilities and thus mislead the public into thinking that a great saving is being made when the fact is just the opposite. Patrons of municipal plants are entitled to the same protection as patrons of private plants. The same is true of inspection. It is as necessary to watch for the infidel in the public employ as it is to watch for the infidel in the private employ. It will take as an efficient corps of inspectors to keep municipal property up to high standards as to keep private property up to a high standard. That is to say, by adopting municipal ownership and operation, the city will save none of the expenses of regulation, and it will add the expenses of proprietorship and operation. If these added expenses can be avoided, as it is believed they can under the kind of regulation described in the succeeding chapters, the public purse will be that much better off.

Each of our various political and social institutions has been evolved in answer to specific human needs. So long as these needs persist the institution must persist in order to give to these needs adequate avenues for expression. When one of these institutions has to assume the functions of other institutions, it becomes to that extent overburdened and hence incapable of adequately fulfilling the main purpose for which it was evolved. Herein, to the author's mind, lies the chief

danger in municipal ownership and operation. The political institutions of our cities have already all the functions that they can adequately perform. Hence, if possible, they should be saved the extra burdens incident to the ownership and operation of a city's numerous utilities. These extra burdens they can be saved through the introduction of competent regulation. Competent regulation will not only save these institutions from extra burdens but will also retain to the public the chief advantages of private ownership of such properties.

While this is true, it must also be ever borne in mind that the abuses of non-regulation are far greater and more pernicious than the evils arising from overburdening already heavily burdened city officials. Only in case these abuses of private ownership can be abated, should the tendency toward municipal ownership be checked. Investors, corporations, managers, consumers, and public officials must recognize that the question is no longer whether or not such concerns are subject to public regulation, but whether or not virile, thorough-going public regulation can be substituted for municipal ownership and operation. Only in case thorough-going regulation is accepted, should the tendency toward municipal ownership be checked. The following chapters are devoted to the consideration of competent and adequate means of regulation with the belief that in such only lies the solution of the tremendous problem of how our American cities are going to secure and protect their most urgent public needs and necessities.

CHAPTER III

THE MINNEAPOLIS GAS SETTLEMENT: A TYPICAL STRUGGLE FOR A CITY'S RIGHTS

The experience of three short years has made the city of Minneapolis a well-educated community along franchise lines. Previous to 1907, there had been little to develop a franchise sense in the community, and the public service companies dwelt in a condition of immediate peace and of comparative serenity regarding the future. Previous to that year, it would have been possible to put through the city council, without any notable protest, franchise grants that would have very inadequately guarded the public's interests. This would not have been because the city council was more neglectful of the larger community interests than those of other cities where the people had been more vigilant in this regard, nor that the citizenship was necessarily less intelligent or alert. It was simply a case of an undeveloped sense of the meaning of a public utility franchise and its value and economic significance in a large and growing community. The way in which the city came to know the value of franchises, and came to appreciate the significance of the city's power to own and operate its own utilities is told by Stiles P. Jones, secretary of the Voters' League of Minneapolis, as follows:[1]

[1] This paper was first published in the *Proceedings* of the Buffalo meeting of the National Municipal League, 1910. The author has revised it for this volume.

The real education of the Minneapolis public, in a franchise way, began early in 1907, when the campaign was inaugurated for a new franchise agreement between the city of Minneapolis and the General Electric Company. This company is one of the concerns controlled by Stone & Webster of Boston, and it practically has a monopoly in furnishing electric energy in Minneapolis.

The General Electric campaign covered about two years, and was a long drawn out and bitter controversy. The company bent every energy toward securing a favorable franchise agreement to replace a somewhat legally doubtful combination of odds and ends of grants made at various times to the different companies which were finally merged into the General Electric Company, while the mayor and part of the city council, backed by assistance from some prominent business sources, insisted upon a settlement that, in larger measure, would protect the public interests.

It was a notable contest, with the usual invasion of high-priced experts testifying for the company, and with the public's representatives comparatively uninformed and for a long time groping in the dark.

The campaign began with the repeal by the city council of all the company's job lot of ordinances, and culminated in the adoption of a new general ordinance which fairly well conserved the public welfare.

The ordinance, as adopted, failed to meet the standard made by Mayor Haynes, who, along with some others, had been getting educated in this regard, and he vetoed it. The friends of the ordinance were never able to muster enough votes to pass it over the mayor's veto, and matters between the company and the city have been *in statu quo* since, the company operating presumably without a legal franchise and making its own rates and

classifications. The company has, however, voluntarily put in effect rates lower than those prevailing under the old regime, but yet somewhat above those made in a previous ordinance applying to rates only, which had been adopted by the council and signed by the mayor. The company has steadfastly refused to accept this rate ordinance, while thoroughly satisfied with the provisions of the general ordinance vetoed by the mayor.

The main provisions of the general ordinance are as follows:

The term of the grant is thirty years, with full publicity of records and no discrimination as between customers in the same class; an initial rate to the city of $33.00 per horsepower, and $65.00 per lamp for street lighting for a total of 3,650 hours; for the private customers, 9 cents net for residence and commercial lighting for the first 52 hours, with a secondary rate of 6⅔ cents; for manufacturing purposes, 7½ cents for the first 52 hours, with a secondary rate of 2½ cents, with 10 per cent. discount.

The city is given the right to regulate rates once a year, but it is provided that such rates shall be just and reasonable and insure a fair return on the capital investment. The company may appeal to the courts as to reasonableness of the rate. The city is granted the right of purchase as a "going concern," with no value for franchise. To make such purchase requires a two-thirds vote of the council, and the city has three years to pay for the same. It is expressly stated that the ordinance is not exclusive, and consolidation is prohibited.

The supporters of the ordinance insisted that it was a model arrangement with the company, both as to rates and regulation of service. They held that, in view of the right of purchase by the city and the right to regulate rates each year, there could be no valid objection to

the length of the franchise term; that it amounted to practically an indeterminate franchise, and that every right properly belonging to the city was well conserved.

The ordinance was adopted by a vote of 14 to 12. Mayor Haynes, as before stated, came back promptly with a veto. He objected to the length of the term of the grant, on the grounds that it was not an original grant, but only an extension of a franchise to an established company that had long been making large profits. He declared that, as a principle, frequent renewals of franchises were necessary to compel good service to the public. The right to regulate rates by the city, he showed, did not necessarily mean lower rates, as the company could secure higher rates on a proper showing to the courts. He also objected to the ordinance because it did not provide for a basic valuation of the plant before the franchise was granted. He insisted, also, that provision should be made to safeguard the public against unfair contracts between the company and the Taylor Falls Power Company, the outside concern generating the power and organized as a distinct corporation, but owned by the same parties.

It is of interest to note that Mayor Haynes made this General Electric issue the keynote of his campaign for re-election in 1908, and won out by a small plurality, as a Democrat, in a community normally 10,000 to 12,000 Republican.

While the General Electric franchise remains yet unsettled, the controversy helped materially to educate the community in the intricacies of the franchise problem and to lay a foundation for the future.

A year later, in June, 1909, began the second lesson that still further perfected the franchise education of the community. The city and the Gas Company were the

contending factors this time. This was an even more notable struggle than the other, with still larger stakes at issue. Every point was strenuously contested. Every inch of ground gained by either side was secured and held only after persistent effort.

For eight months the contest waged. Its conclusion left the mayor broken in health, while the company's chief counsel sought warmer climes to restore his shattered nerves. The chairman of the special committee having the franchise in charge retired from public life this year through sheer weariness with the exacting labors of his job, and the animosities created among the conflicting elements of the citizens over the merits of the controversy will not soon heal.

The actual settlement was a distinct victory for the city and for the advanced school of franchise thought in the community. But it fell just short of being a complete triumph by the final action of the council in eliminating the right-of-purchase clause contained in the original ordinance, and twice passed by the council and signed by the mayor. With this one point excepted, the radical franchise element secured practically all their demands, and the city secured a franchise grant that, all in all, may be considered a well-nigh model document.

To understand the difficulties of the gas situation that confronted the city, it is necessary to recite a few of the provisions of the original gas ordinance of 1870. This gave the company a grant for forty years, but added:

> That if, at the expiration of forty years, the said city shall desire to purchase said franchise and said gas works, it shall have the privilege of doing so upon the following terms, namely: That said city may purchase the franchise

pertaining to its territory, and gas-pipes, works, fixtures and other property pertaining to said business at the actual value of the same, the value to be fixed by three arbitrators, who are to be chosen as follows: One by said city, one by the owners of the franchise, and the third by the arbitrators thus chosen; and the arbitrament, or award, of value made by these three, or a majority of them, shall be the price at which said city may purchase said franchise and property.

That should the city decline to purchase at the valuation as aforesaid, then said rights, franchise and privileges are to continue twenty years longer to the said persons, their heirs, executors, administrators and assigns, with the conditions herein before in this ordinance stated.

The contention of the company was that the franchise, in legal fact, was a sixty-years' grant and that, should the city fail to exercise its right of purchase in 1910, at the end of the forty-year period, the franchise was thereby automatically extended for twenty years longer, with the old terms and conditions continuing.

With this view of the situation, the company, in June, 1909, formally submitted to the city council a proposition embodying certain concessions it would make in consideration of the waiver by the city of its rights to purchase the property and franchise of the company. The city's right of purchase expired February 24, 1910.

The company took the view that the negotiations it desired to begin with the city did not involve the granting of a new franchise at all, but was simply a bargain proposition—the company would concede certain things to the city and the private consumers in return for a waiver of the right of purchase—and it declared that it did not deem it necessary or advisable to discuss the respective rights of the company and the city. ,

There is no question that the company and the city's

representatives at this time took about the same view of the situation. Neither side expected that it was facing a more serious situation than that described as "amicable negotiations," to end with an early and easy settlement involving no material change in existing conditions, except as to rate concessions to the city and the public.

The company's proposition, submitted at the early session of the special committee of the city council, was, in brief, that it would reduce the price of gas to the consumers from $1.00 to 90 cents, and to the city from 90 cents to 80 cents, and, as a further concession, would, during the twenty-year period, furnish gas free of charge to 2,112 new street lamps already installed and 300 additional lamps each year. In return for these concessions, the company asked for a reduction in the candle power of the gas from 23 to 18 and a standard heating value of 600 B. T. U., the standard fixed by the Wisconsin Commission. This was about 40 B. T. U. less than the company had been voluntarily furnishing under the existing contract with the city.

Subsequent sessions between the company and the committee found the negotiations getting nowhere. The committee had no expert information to guide its course, and the company, with all the facts available, seemingly had the situation well in hand, and a settlement based on the above proposition seemed likely.

At this juncture Mayor Haynes brought an expert on the scene in the person of Prof. W. D. Marks, of New York City. He sat with the committee for several weeks and furnished much useful information bearing on the subject. From the day of his appearance the aspect of the situation changed materially. The city's representatives began to see their way clearer, and the hope of settling the controversy by "amicable negotia-

tions" along the lines originally laid out was gone. Both sides now settled down to a long-drawn-out struggle, with every point contested, but with the prospect of securing a more advantageous settlement for the city greatly improved.

A little later in the negotiations, Judge F. C. Brooks entered the controversy as legal expert in behalf of the city. This was the master stroke of the council committee. In a comprehensive legal opinion Judge Brooks defined the rights of the city and the company under the original franchise. This opinion cleared up some previously obscure legal questions involved, and, up to this time, interpreted against the city, knocked out some props from under the company's claims, and put life and hope into the city's representatives. The city's case gained steadily from this time on.

The company, on its part, slowly gave ground, but yielded nothing except under the hardest pressure, and with each concession declared that the last ditch had been reached; that there would be no further concessions. There were many of these "last ditches" before the controversy was finally settled.

Professor Marks, who is an advocate of the London sliding-scale system of regulating the price of gas in municipalities, recommended at the start the application of this system to the Minneapolis situation. He suggested a basic rate of 90 cents, with a 7 per cent. dividend. He contended that this system would unite the interests of the company and the municipality, promote harmony, and perpetuate cordial relations between all parties concerned. The company's officials entered a mild objection on the spot, and later, following a visit to the office of the United Gas Improvement Company, in Philadelphia, owner of one-half of the stock of the

company, declared unequivocally against this innovation. The wide disparity between the amount of the stock and the bonds made it a practical impossibility, they claimed. The capitalization at this time was about $6,000,000, of which only $800,000 was capital stock.

Later on, near the close of the struggle, the company changed front on this proposition and voluntarily suggested its willingness to consider Professor Mark's plan as a means of ending the controversy. The council committee, now thoroughly awake and on its mettle, promptly entered an emphatic "no" to the company's suggestion. In fact, the committee at no time endorsed on its part the sliding-scale proposition; but if the company had shown a willing spirit at the time the matter was first suggested, it is possible that a settlement might have been made on that basis.

The struggle was then resumed along the old lines, with many weeks of laborious hearings. A contractual ordinance was finally perfected, adopted by the council, and promptly signed by the mayor. It contained the following essential terms:

Surrender by the city of the right to purchase and an extension of the franchise for twenty years, i. e., until 1930.

A net price of 85 cents for gas to private consumers and 65 cents to the city.

The right of the city to regulate rates at the expiration of three years, and at five-year periods thereafter, such rates and prices, however, to be reasonable and so fixed as to afford a fair and reasonable return upon the company's capital investment, the reasonableness of such rates being always subject to review, in behalf of the company, by the courts, and the term capital investment defined as "the fair and reasonable value of its plant as a going concern," no value, however, to be placed on good will or franchise, and no

regard to be had to the company's capitalization, as represented by its stock and bonds.

Prohibition from disposing by the company of any of its securities, except in good faith and at a fair value, and for actual cash put into its treasury and appropriated to the making of betterments or extensions or to the payment of its preëxisting bona fide bonds or obligations.

Complete publicity of accounts, including an annual report to the city containing a statement of all assets and liabilities, the gross receipts for the year, expenditures, improvements, betterments, extensions, etc., also net earnings and dividends paid, and an inventory of all property, real and personal.

The right of purchase by the city at the end of five-year periods, the purchase price to be determined by appraisal and the city given three years to pay for the property.

Regulation by the city of the hours and wages of the company's employees, contained in a provision that declared that no manual laborer should be required to work more hours in a day than should be required by law upon work done for any contract involving the employment of laborers made by or on behalf of the state, and that all laborers should receive wages that were just and reasonable, and not less than customarily paid for labor of like character and requiring like skill or experience.

The inspiration for the last provision came from one of the aldermen of the ward in which the gas works are located, and was an expression of protest against the long hours of labor imposed upon the employees. The suggestion to incorporate this clause in the ordinance met at first with ridicule and open expressions of hostility, both on the part of the company and some members of the committee. The author of the provision kept pounding away, however, and eventually the committee came to see that it might be a dangerous political propo-

sition to turn the measure down, and it was finally incorporated into the ordinance by a unanimous vote. The effect of this clause in the ordinance is to impose the eight-hour day upon the company. It is a unique provision in a franchise grant, but significant as showing the growth of sentiment towards the new view of the responsibility of a municipality to conserve the health and improve the social conditions of the people.

The price made to consumers and the city was the company's own proposition. Every other essential provision was forced into the ordinance by the city's representatives, and conceded by the company reluctantly and only after repeated protests.

On several occasions it seemed that the negotiations were bound to come to a disastrous end. Three times the mayor, wearied with the length of the negotiations and aggravated by the attitude of the company, urged the council to abandon negotiations and proceed to condemn the property for municipal ownership and operation under the "Eminent Domain Act." Twice the company, on its part, declared that it could go no further, and that rather than yield another inch it would prefer to sell the property to the city under the terms named in the ordinance of 1870. But there was a shrewd, and patient, and long-enduring man at the head of the council committee, and he held his committee together successfully and kept it working steadily toward the goal of an ultimate settlement that would obviate abandonment of negotiations and purchase by the city.

The company's response to the city's action was a flat refusal to accept the ordinance in the form adopted. It made its chief objections the right of purchase and the labor clause. The company explained that it would be necessary to borrow a large amount of money to rehabili-

tate and enlarge the plant, and contended that inclusion of the purchase clause would make this task impossible on any terms that it could accept. Rather sell to the city than concede this point, was its ultimatum.

The council committee stood pat, and apparently there was a hopeless deadlock.

At this crisis a new factor entered into the contest—a committee representing some of the banks and large business interests, who were much worried over the situation, fearing an abandonment of the negotiations and the taking up of the dread alternative of municipal ownership. In their view, city ownership and operation of the plant was a consummation to be avoided at all hazards; and they constituted themselves a board of conciliation with the purpose of bringing the contending parties together.

The first suggestion of the business men's committee to effect a settlement was for the council to drop its contention for the right of purchase. The committee agreed to this programme, but was unable to make wholly good on the floor of the council, the more radical element forcing through an amendment to the committee's report which provided for a ten-year purchase clause, as a substitute for the former five-year clause. The ordinance as thus amended was passed and, for a second time, signed by the mayor.

The company, however, still held out, and municipal ownership now seemed imminent. But the citizens' committee, more determined than ever to bring about a settlement, buckled down to its task again. Its next move was to offer the suggestion that there be no purchase clause included except at the end of the twenty-year period. The company consented to accept the ordinance in this shape, with the labor clause included, subject to its

ability, however, to make the necessary financial deal. The ordinance as thus amended passed the council with seven dissenting votes out of a total of twenty-six. Some who up to this stage had stood staunchly for a five or ten-year purchase clause yielded to the pressure from the citizens' committee and went over to the other side.

The substitution of the twenty-year for the ten-year right of purchase failed to meet the approval of Mayor Haynes. The mayor now found himself in a real predicament. He felt that he could not sign the ordinance; nor could he see his way clear to veto it, as a veto might have defeated the ordinance, with the probable result of endless litigation and possible ultimate public disapproval on account of the delay of the day of lower gas rates. He was ready for municipal ownership himself, and so was a fair minority of the council. He finally worked out of the predicament by allowing the ordinance to become a law without his signature. The company shortly made advantageous financial arrangements and accepted the ordinance, and it went into effect promptly, thus finally closing a settlement that left the property in private hands.

The city and the company then came together without great difficulty on the terms of a second ordinance prescribing regulations of service. This ordinance makes specific requirements as to candle-power, heating efficiency, pressure conditions, extensions, etc. The power to make reasonable regulations of service at any time had all along been admitted to be vested in the council. This ordinance has a special interest to the expert as representing perhaps the most up-to-date ideas as to proper service regulations. In the hands of a vigilant and fearless gas inspector it is adequate to safeguard the consumer's interest at every point.

The abandonment by the council of the right to purchase the property of the company at stated periods within the life of the grant is not fairly explained without some reference to the Eminent Domain law of 1909. This law had an important bearing on this point, and was the excuse assigned by some of those who failed to stand to their guns in this regard.

The eminent domain act was forced upon the attention of the legislature in 1909 by Mayor Haynes, with the aid of a few of the aldermen and some other patriotic citizens, who saw the necessity for the city to be in a more strategic position to deal with the gas company upon the expiration of the forty-year term. The act, in brief, gives the city of Minneapolis the right to take over the property of gas, electric, and water companies for city operation, upon a two-thirds vote of the council, ratified by a four-sevenths vote of the people at a special election. The purchase price is to be determined by appraisal. The bonds issued for this purpose are not counted against the city's debt limitation, and the city must make rates " sufficient to pay interest and maintain and operate the plant at a high standard of efficiency."

The power of condemnation contained in this act was deemed by many a sufficient corrective of any possible bad management or other lapses on the part of the company without the addition of the contractual right of purchase. But with the ever-present possibility of the repeal or emasculation of the act by subsequent legislatures, the mayor and others insisted that the incorporation of the right of purchase in the contract agreement was no less a necessity on account of the existence of the statute.

One of the undoubted defects of both the electric and gas ordinances is the lack of a basic valuation of the

properties, as furnishing more accurate means of getting at a fair rate to consumers. This matter was considered in the course of both negotiations, but neither company was ready to concede the point, and there was not sufficient support in the city council to force the issue. Lack of time to make a thorough appraisal was a factor in determining the city's attitude in the case of the gas company.

It is the general opinion that the General Electric Company will shortly again be an applicant for a franchise. In anticipation of that event a committee of citizens recently presented a report on the situation and made recommendations for the settlement of this controversy. This committee meets the plant valuation issue by recommending that the price, in case of purchase, be the actual cost of reproduction plus 10 per cent., instead of a more complicated method of reaching the same result. The committee recommends a twenty-five-year, instead of a thirty-year, grant, with privilege of purchase at the end of five-year periods; also elimination of the term "going concern."

The apparent discrimination in favor of the gas company as against the General Electric in the exclusion of the right of purchase is in part explained by the fact that the council believed itself to be in a position to impose harder conditions upon the General Electric than on the gas company. In one case the company was asking practically for a new franchise, while the other company had certain legal rights under its original grant that gave it both a moral and strategic advantage. Another factor of importance in this connection was the disposition on the part of an influential element, in office and out, to do everything possible to preclude city ownership of the gas utility.

The clause in the gas ordinance giving the city the right of purchase at the end of twenty years, the term of the grant, was a vote-catching proposition put forward by the business men's committee as a final effort to effect a compromise between the contending forces. There is doubt in the minds of some, however, regarding its value or advisability from the point of view of the city's advantage. In fact, Judge Brooks, the city's legal adviser, early in the negotiations advised the committee not to include it. He declared it was to the city's advantage to leave the relations between the city and company at the end of the grant entirely open. The company at the conclusion of the twenty-year period would be without any legal rights in the city, he explained, and the city council in a position to deal with the situation wholly unhampered.

Judge Brooks' advice was either forgotten or ignored in the haste to reach a settlement that would head off municipal ownership. As a matter of fact, the municipal ownership men never for a moment expected to secure city ownership of the property at this time, nor did they take seriously the company's refusals to accept the first two ordinances adopted by the council, feeling sure that the company would eventually accept all the terms made in the original ordinance rather than turn the property over to the city. The mayor and the leaders of the radical franchise element in the community were charged with deliberately attempting to provoke a situation that would end negotiations and force municipal ownership. This is far from the truth. These men, while for municipal ownership in principle, had effectually held their followers in leash throughout the negotiations, holding that a proper settlement without city ownership at this time was the wiser course. But they insisted strenuously

that the way be left open for ultimate municipal ownership, through the right of purchase by the city at fairly frequent intervals.

An interesting legal point involved in the controversy was the value to be put on the company's franchise at the end of the forty-year period, in case the city should purchase the property under the old agreement. The company's attorneys insisted that the franchise had a large value at this period, and that the city would have to pay it. City Attorney Healy had coincided with this claim, Judge Brooks, however, took quite a different view of the situation. In his opinion, the franchise expired at the end of the forty-year period; therefore, there was no franchise to purchase. Mr. A. E. Clarke, additional counsel employed by the city to pass upon the city's legal rights, declared that the company had, in effect, a sixty-year franchise, as asserted by the company's counsel, but that the franchise had only a nominal value at the end of the forty years.

The claim put forward by the company and some of its friends that there was an implied obligation on the part of the city to assist the company in financing its affairs by giving a liberal franchise was another interesting point brought out in the negotiations. This also was used as an argument by the General Electric Company for the desired long-term franchise. Both argued that the public would inevitably share in the benefits through the better rates accompanying the lower fixed charges.

PART II

REGULATION THROUGH FRANCHISES

CHAPTER IV

FRANCHISE ESSENTIALS

A franchise is the contract by virtue of which private individuals and corporations exercise their right to use the city's streets in distributing to consumers given services and commodities. It is by virtue of their franchises that these individuals and concerns collect tolls for their public services. Anyone attempting to perform such a service without the proper franchise would be a trespasser. It is this special privilege that in its very essence is before the law inequality—licensed inequality. Franchises are special privileges by virtue of which their owners, unless there be adequate public control, can exploit the public for private gain. It is because they are special privileges of this character that they should be drawn with care, and the individuals or corporations to which they are granted should be held continuously subject to virile public regulation. A business that would not exist but for specific social authorization stands in a different category from a business that requires no definite social authorization. The former business society has a definite claim upon; it is its right and duty to see that its creature shall not proceed altogether according to its own will, but shall respect the will and the needs of the power that created it.

These rights so to use the city's streets are hence of

inestimable financial value. Just how great their value is depends: (1) Upon the city's rapidity of growth, and (2) upon the extent of freedom from public control and regulation.

To the financier a franchise means an opportunity to capitalize the city's future needs. In static cities it may represent only opportunity for good investment, but in dynamic cities it represents unlimited opportunities for speculation as well. In rapidly growing cities the returns to public service corporations increase far more rapidly than the proportional increase in population. For instance, with a thirty per cent. increase in population, the number of street railway rides will increase over sixty per cent. The same ratio largely holds as to other public utilities. It is the right to capitalize these increased returns that gives to franchises their great value. By their very nature all franchises are exclusive. An exclusive franchise gives to its owners the power to capitalize income above the average interest on investment, either in the higher price of the stock, or in additional stock divided among those that control the corporation. If the franchise is also perpetual, its owners may capitalize a practically perpetual income. This will give an immense capitalization which can be divided up among the corporation's managers and owners. If the franchise is limited, there is only a limited series of privileged incomes that may be capitalized, but even in this instance, capitalization will be, if uncontrolled, large, indeed; and it may be enhanced if the managers can maintain sufficient control of the city's government to make it practically sure that their franchise can be renewed at any time on their own terms.

It is to obtain and maintain these privileges of capitalizing future incomes, of turning into private pockets

all the unearned increment, that is the motive force back of the attempt of financiers to secure franchise grants. To get these grants they have resorted and will probably continue to resort to the use of all the means at their command, including bribery and domination of city and public officials, the selling of valuable stock on easy and low terms to those in influential positions, and the combining with other industrial groups of like needs to keep the "safe and sane" on the bench and in governmental positions.

The value of franchises and the method of securing them are suggestively brought out by Mr. James C. Carter of New York City, in his Annual Presidential Address to the National Municipal League at its Boston meeting in 1902. President Carter said:

What is the value of the street railway franchises of the city of New York, do you suppose? Well, we know something about them from the extent of the capitalization of the street railways. They are worth at least $200,000,000. Of that, after you take out the money expended in the laying down of rails and the building of cars and all other furniture that belongs to the proper operation of a street railway, amounting to $50,000,000, there remains the franchise, which has been given by the city for nothing, and which is well worth the remaining $150,000,000. How does that happen to be given? You cannot get such a thing as that without going to the man who stands above all others. What will he do? He must be "seen" in some manner. Somebody must go to him and say, "We want to operate a street railway on such and such streets; we know that you are very influential and that you can give it to us." Well, no bones are made about stating the terms of these transactions. His answer is, "How much do you suppose that it is worth, gentlemen?" "Well, we don't know; how much do you suppose it is worth?" Now, no one knows the figures that are eventually

fixed in order to secure grants of that sort, and I may say no one absolutely knows—I do not absolutely know from any distinct evidence—that any money is paid for them. But if anyone has credulity enough to believe that Mr. Richard Croker, or any of his tribe, used the power which they undoubtedly possess to grant or withhold those franchises without payment, he is credulous, indeed; and I suppose that the amount that is paid for them is measured not by hundreds or by thousands or by hundreds of thousands, but by millions of dollars.

The growth of our cities to a point where public services become essential and hence profitable occurred during the early half of the nineteenth century, when it was the custom to incorporate all such service by a special act of the State Legislature. Long after this method of incorporation was supplanted by laws and constitutional provisions requiring incorporation under general statutes, State Legislatures continued to grant special privileges to municipal utilities. Not until 1867 did Congress deny to Territorial Legislatures the power "to grant private charters or special privileges."

Examples of the sort of special legislation that municipal utilities obtained in these early days are found in the acts of the Territory of Colorado in granting exclusive privileges to public service corporations desirous of using the streets of Denver.[1] In 1864 the Territorial Legislature incorporated "The Occidental Gas Light Company of the City of Denver" and gave it for thirty years "the exclusive privilege of supplying the City of Denver with illuminating gas." Again in January of 1867, two months before the passage of the national act forbidding such legislation, the Legislature incorporated

[1] See "History of the Government of Denver," King, pp. 63–64.

"the Denver City Horse Railway Company" and gave it for "a period of thirty-five years the sole and exclusive right and privilege of constructing and operating a horse railroad in the City of Denver."

It was abuses of this nature that led to the introduction into most, if not all, of our State constitutions clauses forbidding Legislatures from granting franchises and rights in city streets without the consent of the local authorities. This era of special legislation may be regarded as the first period in the history of franchise grants in the United States.

Following this era was a period, occupying the latter half of the nineteenth century, in which companies were incorporated under general laws and obtained their franchises from local councils.

These general incorporation laws, however, have never afforded, and, with but very few notable exceptions, do not yet afford to municipalities any protection whatsoever. In no sense do they protect over-capitalization, fraudulent capitalization, exorbitant or discriminatory charges, or any other abuse of corporate power. Our legislators have said much about corporate evils, but they have done little or nothing to correct them. Slack and inefficient incorporation laws have been responsible for the defeat of many a city in its attempt to gain concessions from its serving companies.

City councils at first granted franchises to whomsoever would apply, making no reservations or restrictions in the interest of the city and the public. It was held that public regulation was unnecessary because competition would be a better regulative force. For a time the supposition that the competition of rival concerns would adequately protect the city and the consumer found some justification. In Philadelphia at one time no less than a

dozen and a half street railways were seemingly competing for the city's traffic. Such situations existed in other cities and in other utilities. But competition did not persist for the quite sufficient reason that such concerns are in their very nature monopolistic. Unfortunately this fact was not known to all until, through free, unprotected franchise grants, the towns of the nineteenth century had bound hand and foot the cities of the twentieth century.

Denver again offers a splendid illustration of the kind of franchises that were granted during this period. Its council, on February 3, 1880, granted a general electric franchise to all comers in a resolution which provided solely "that permission be granted to any company desiring to supply the city with electric lights, to erect posts and such other appliances as may be necessary to carry on their business; provided, that said companies do not obstruct the public thoroughfares." For the last decade the city has been struggling unsuccessfully with the lighting corporation that first secured the use of the city's streets through this kind of a free grant.

Toward the end of the nineteenth century, however, urban dwellers began to appreciate more clearly the value and significance of franchise rights. An effort was then made to protect the franchise of the future by strict provisions in charters and statutes as to procedure in granting franchises. These provisions usually required ample publicity, due consideration by the council, and sometimes reserved to the city power to regulate. Some states, as Montana, Nebraska, Arizona, and Colorado, required, by constitutional or statutory provisions, that all franchises be referred to popular vote before they could become valid. Other states, including Utah, South Dakota, Indiana, and Iowa, required a popular vote on

a formal petition. Still other states, such as Missouri, Louisiana, Nebraska, New Jersey, Ohio, Kansas and New York, required the consent of abutting property owners for all street railways. Still another characteristic feature of this restrictive legislation was the adoption of a maximum limit as to the number of years for which franchises could be granted. The usual limit was from twenty to twenty-five years. The New York charter of 1897, for instance, accepted the latter limit. In other charters and statutes the tenure was fixed at twenty years.

A third period in the method of granting franchises dates, in effect, only from 1907, though the idea dates from the creation of the Massachusetts Gas and Electric Light Commission in 1885. In this period specialized administrative tribunals, public service commissions, have been created solely to pass upon and to administer franchise and utility problems. This is the twentieth century method of regulation. In it lies the possibilities of a competent solution of the public utility problems that are confronting every city in the whole country. Its importance has led to its being given a large and important place in the later chapters of this volume.

Throughout all this franchise history certain vexing franchise problems have continued to tax to the utmost the ingenuity of those who are wrestling with the problems of proper relations between a city and its utility corporations. As social and industrial methods have changed, the method of dealing with these problems has changed. The problems still persist, however, and are of vital present-day import. They may be summarized under the heads of: (1) Tenure. (2) Compensation. (3) Rate, service and extensions. (4) Laborers and strikes. (5) Reversion of the plant to the city.

Like all social and industrial questions, there are no hard and fast solutions of these problems that are good for all times and places. But there are solutions that are in keeping with existing social and industrial conditions. It is the purpose of the following paragraphs to discuss different phases of these problems, to point out their significance, and to indicate the way in which they may best be met under existing conditions.

The earlier franchise grants were given without restrictions and for long periods. A few were granted for fifty years, many more were granted for ninety-nine years, some, as, for instance, one given by Albany, were granted for a thousand years, while in numerous cases, as in Massachusetts and New York, franchise grants were in perpetuity. As late as 1879, indeed, the elevated railroad in New York City was constructed with no limit on its occupation of the streets.

But by this date, in most cities and states, public opinion had begun to demand that unconditional, long-term grants be no longer made. It is to be regretted that this public awakening did not occur until after the city had given away its most valuable privileges, and had reserved to itself no means of self-protection, no means of regulation, no means of securing concessions even through refusing to grant new franchises. The placing of statutory and constitutional limits upon the length of franchise tenures, etc., came too late. Only the desire of formerly competing utility concerns to consolidate into one concern gave to many a city its opportunity to substitute short-term for perpetual franchise grants.

This short term has, of late, been demanded by all our city councils, though there have been some notable exceptions. New services and enterprises have been encouraged, however, with longer grants. Thus the aver-

age water franchise of to-day runs for a period of from twenty to thirty years, only occasionally for fifty years, and only in rare instances for ninety-nine years, or in perpetuity. Street railway franchises are rarely given for over twenty-five years, although so late as 1909 Seattle voted to the Northern Pacific a perpetual franchise around the Lake Union basin. But lighting franchise terms are longer than the tenures of these older services, while the franchise tenures for telephone, telegraph, steam, conduit and pneumatic pipe concerns are usually for very long periods—often for half a century—and, in rare instances, in perpetuity.

No definite tenure can be established for all franchise grants. Where there is not continuous regulation with an alternative for city ownership, the grant should undoubtedly be for as short a term as will secure the investment of private capital.

In large, rapidly growing, dynamic cities, a twenty-year tenure will probably be long enough; as in that period the social and industrial conditions in such cities will have so completely changed as to necessitate entirely new contracts.

In static, or slowly growing, cities, however, a forty-year tenure may not be too long. But certainly there is no necessity for a franchise tenure of over forty years.

In any case franchises for extensions should be made to terminate with the expiration of the franchise for the main system. Otherwise the city's hands will be so completely tied that it can do nothing when the main franchise expires.

In the interest of keeping these corporations out of city politics, it may also be advisable to make it impossible to renew a franchise until within one year of its expiration. This may prevent the company's taking ad-

vantage of a complacent or corrupt city council to secure a new and liberal franchise long before the old one has expired, and before the public is alive to the situation. It must be noted, however, that so long as franchise enforcement is vested in the city council, such provisions will not entirely divorce the council from the untoward influences of utility corporations. The daily administration of franchises is so vital that the corporation will ever keep its lobby in the council chamber in order to avert franchise enforcement and to secure favorable interpretation of franchise clauses.

However, under adequate and persistent regulation, with full power in an expert regulative body to secure complete information and to enforce its every rule, the term franchise should give way to the indeterminate franchise. This should be done, it must be clearly understood, only when the concern is under virile and continuous public regulation. The indeterminate franchise is granted during good behavior. It differs from the perpetual franchise in that it may be revoked at any time that the regulating body decides that the corporation is not properly serving the public's interest.

The indeterminate franchise frankly recognizes two principles, the frank recognition of which alone will make adequate and intelligent regulation possible. These are: (1) That municipal utilities are monopolies, and (2) that the investor, as well as the public, must be protected. The indeterminate franchise, coupled with adequate public regulation, recognizes the monopolistic nature of such concerns, and hence makes them subject to continuous regulation. It also recognizes that, in the interests of the public, unreasonable returns to these monopolies should be reasonably diminished by requiring lower rates, or extensions or improvements of service.

The Wisconsin, New York and other adequate public service laws provide that corporations with short-lived franchises may exchange them for indeterminate franchises. This does away with the speculative element in public utility investments, and does away with the unnecessary augmentation of fixed charges in order to provide against competition. And sums thus saved can go to the public in the way of lower rates, extensions and improvements. As soon as this law went into effect in Wisconsin, seventy-two corporations, representing 37 per cent. of the gross earnings from utility business in the state, exchanged their term franchises for indeterminate franchises. Others did so soon afterwards. The market price of the securities of those utilities accepting the indeterminate franchises at once rose, and has, as a rule, been higher than those concerns operating under time franchises.

When franchises are not terminable before their expiration, fixity of tenure makes control difficult. With franchises revocable at will, or at least at brief succeeding intervals, control is always possible. The indeterminate franchise, accompanied by public regulation, cannot only secure this control, but can also compel the creation of an amortization fund, by which the city may purchase the plant or by which the debt of the plant may be canceled at the expiration of a given period. The indeterminate franchise has undoubted merits over the term franchise.

Another vital franchise problem is that of compensation. Numerous, indeed, have been the methods adopted for securing to the city a compensation for its franchise grants that was somewhat commensurate with the value of the grant.

The method that first met with general favor was to

require license fees. The right to carry on public occupations of this character was placed upon the same basis as the right to run a saloon, peddle goods, or to have rooster fights. In the street car service this license was usually fixed at so much per car, $20 in the Baltimore street railway franchise of 1859, and $25 in New York, Chicago and Philadelphia grants made soon after this. The result of the license method was, of course, to cause a reduction in the number of cars, and hence overcrowding. The same results obtained when the license principle was applied to other public utilities. The unit subject to license was always reduced to a minimum at great public inconvenience.

The evils of this method of compensation were so obvious that, in time, concerns were required, in lieu of license fees, to perform stated municipal services. Thus the street car companies were required to pave between their tracks, and two feet, or some such distance, on each side thereof, or to clean and repair the entire street over which the railway operated. Philadelphia at one time required the railway to pave the entire street over which it ran. Many evils arose from this method of compensation, chief of which was that the companies did their work poorly, or kept a lobby in the council to prevent their being required to do any work. Hence, in time, this method of compensation was generally abandoned as a failure.

The next method adopted was to require the payment of definite lump sums per annum; that is, to frankly farm out the city's services to the highest bidder, as Athens farmed out her public services, and Rome farmed out her taxes. This method of compensation is the basis of the existing laws in Kentucky, Louisiana, Virginia, California and Nevada, which require that municipal franchises

be let to the highest bidder. While definite financial compensation was a great improvement over no compensation, whether financial or social, yet it had the definite defect of having no necessary relation to the actual value of the franchise to the company, nor to the actual value of the corporation's services to the city. It usually resulted in mere bickering between the representatives of the corporation and the members of the city's council, with the result that the councilmen often got the remuneration instead of the city.

The next method devised for securing adequate compensation for franchise grants has met with no small degree of success. It is still used with profit in cities where no adequate regulative tribunals exist. This method is to require the corporation to pay to the city a given per cent. of its gross receipts. In most instances, as in New York, Providence, Philadelphia, Newark and Richmond, the company was to pay to the city annually five per cent. of its gross receipts. Cincinnati gets six per cent.; Chicago receives fifty-one per cent. of the net profits of its tramway corporation. Recently there has been a tendency to supplant or accompany this method of securing compensation by uniform state franchise tax laws. In Massachusetts the franchise tax brings in $3,500,000 annually. In Virginia, for the year 1909, the franchise tax on street railways alone brought in $35,935.04. As a method of acquiring compensation from municipal utilities that are not subject to adequate public regulation, the payment of a certain per cent. of gross receipts commends itself over all the other methods previously discussed for obtaining compensation. Gross receipts can usually be learned with some degree of accuracy.

There are, however, three main objections to re-

quiring high financial compensation from municipal utility corporations. These are: (1) That the person served, not the serving company, pays for it; (2) that it tends to dispense with expenditures for extensions and improvements, and is used by the company as a pretext for high rates and for stringent regulations; and (3) franchise values *per se* should not be taxed.

It is evident that, if high financial remuneration is demanded, the company secures it through high rates, stringent regulations, refusals of transfers, etc., all of which the patron pays for. It is equally evident that a high taxation makes adequate extensions and proper improvements in service impossible. Even if extensions or improvements are made, they are made by added levies upon the pockets of the consumers, not by diminishing the profits of the concerns. Proper principles of regulation demand that the franchise value be reduced through proper regulation until it represents no value in itself. That is to say, through requirements as to rates, improvements and extensions, the franchise value should be so reduced that the company's capitalization represents only the actual physical value of the plant; then there will be no franchise value left to tax. This method will prevent fraud and speculation, and will give maximum values to the public.

Under a scheme of non-regulation, however, high financial compensation may properly be exacted; as in no other way can the community get proper returns from its serving utilities. But where adequate facilities and powers for regulation exist, a far better form of compensation is to require lower rates, better services, and adequate extensions. American cities must follow the lead of Germany and other European countries, and

stress their rights to fair rates, adequate service and needed extensions.

Rates should be subject to change by the city at brief intervals, if regulation through franchise obtains, or upon order, if regulation through a public service commission obtains. Out of 138 lighting franchises examined under the auspices of the American Economic Association in 1889, but sixty-three reserved to the city the right to regulate lighting rates. Such is typical of the usual neglect in this field.

For fixing gas rates, Massachusetts has adopted the sliding scale method. This method is ably described by Mr. Wrightington in the succeeding chapter of this volume.

More important than the regulation of rates is the regulation of service standards and of adequate facilities. It is only when the service of a city's utilities are of high standard, and their facilities are wholly adequate, that the urban dweller can live in ordinary comfort, health, and happiness. The power to require needed extensions of equipment and services is of the greatest public necessity. Unless this power vests in the city, the corporation, not the city, can determine under what conveniences or inconveniences the city dweller must live. Social remuneration is of vastly greater import than financial remuneration.

In order to secure reasonable remuneration, to protect the consumer and the community, and to protect the investor, the city must have comprehensive powers over the capitalization and accounting of their utility concerns. The first and most essential step toward adequate control and regulation is the city's power and readiness to compel its every utility to keep their accounts in the manner prescribed by an expert regulative authority. In

this way, and in this way only, can the city secure the data essential to wise and just action. Hence, there must be, in every franchise, clauses granting and reserving to the city effective control over capitalization, including the issuance of bonds and stocks, and the methods by which the corporations keep their accounts. Without such rights the city's power to tax, to regulate rates, to require higher standards of service, and to order expenditures would be utterly impotent.

One problem that has not been adequately solved as yet is the place and function that the city shall assume in case of strikes and lockouts. One principle seems to be clear, and that is *that the public has the right to demand uninterrupted service.* If this principle is adopted, the city will have to guarantee adequate wages and proper treatment to the employees on the one hand, and to secure the corporation from undue destruction and idleness of its property and capital on the other. There is no reason why the consumer should pay higher rates or endure poor service in order to insure the proprietors of public utilities from loss by strikes and lockouts. It must be clearly understood that, where strikes and lockouts occur, the consumer, not the corporation, pays for them. If the city takes the stand that its service must not be interrupted, it must also be prepared to give adequate means of redressing wrongs to the laborer denied the right to strike, and to the corporation denied the right to lock out recalcitrant employees. The laborer and the owner of the city's utilities must be thought of as employees of the city with no right vesting in either to subvert public service. The city must be recognized to be in a real and vital sense part owner of its public utilities. The chief duty of its proprietorship is to see that public interests are not thwarted through the fail-

ure of either the owner or the employee to afford continuous service.

Other franchise problems are discussed in succeeding pages. For the sake of completeness and of emphasis, it will be well here to reiterate the principle elsewhere discussed, that franchise should contain ample provision for amortization funds, and for the easy reversion of the plant to the city.

The wording and the complexity of a franchise, and the care with which it should be drawn, will vary with the degree of public regulation possible. Where public regulation is adequate and persistent, a franchise need contain little more than the mere vesting in a given corporation the right to serve a given need of a given city. But in cities where public regulation is inadequate or spasmodic, franchises must be drawn with greatest care, and must be most minute in their provisions. In all cases a full knowledge of their import and their problems is essential to anything like wise municipal action. To these problems the following chapters are particularly devoted.

Franchise essentials have been studied by carefully selected committees of two well-known organizations, the National Municipal League and the National Civic Federation. Their conclusions make the most valuable and permanent contribution that, up to that time, had been made to this all-important subject. The National League appointed its committee in 1900, and its conclusions were published in the League's Municipal Program published by the Macmillan Company in that year. The committee was composed of Horace E. Deming, New York, chairman; Hon. George W. Guthrie, since mayor of Pittsburgh; Prof. Frank J. Goodnow, Columbia University; Charles Richardson, Philadelphia; Prof.

Leo S. Rowe, University of Pennsylvania; Dr. Albert Shaw, editor, *Review of Reviews;* and Clinton Rogers Woodruff, Philadelphia. The committee's most important conclusions follow. The references are to the pages in the Municipal Program:

"Every grantee should be obliged to render to the city complete accounts of its financial conditions, including its receipts from all sources and its expenditures for all purposes, such accounts to be public records;

"The books and accounts of the grantee should be at all reasonable times open to the examination of the city's fiscal officer or his representatives. (Pages 126-127.)

"The tendency of successful companies to try to conceal or disguise the extent of their profits makes it necessary for the agents of the city to have very full powers of investigation.

"The numerous instances in which public opinion has been unable to reach any definite conclusions—owing to the lack of systematic presentation of financial data—would seem a sufficient reason for these provisions in the Program. One of the most striking instances is the recent leasing of the Philadelphia Gas Works. The conflicting statements of opposing interests were supported by data taken from the same reports. The classification of receipts and expenditures was so confusing that almost any proposition could be read into it. We cannot expect the citizen to subject every public financial statement to critical analysis. He is at the mercy of conflicting interpretations unless the official information furnished him is so clear and unequivocal as to leave no room for doubt. (Page 93.)

"However they may differ among themselves in other respects, neither the advocates nor the opponents of municipal ownership and operation can deny the

strong probability of great public advantage in enforced publicity of accounts of the grantees of franchises from the city; and that it is obvious that, with the rapid growth of our cities and the consequent changes in the conditions which make and unmake the values of such franchises, both to grantees and to the city, a sound public policy would seem to forbid the tying of the hands of the next generation by the bargains of this generation. Nor can those who believe in clothing a city with the requisite power to live its own life and to work out the solution of its local problems in the light of its own needs and its own experience consistently oppose granting to a city authority to decide for itself whether it will undertake to supply on its own account those public services which are the usual subjects of the grants of franchises to private corporations.

"The Committee on Municipal Program is unanimous in the opinion that the city should be free to choose for itself between the policy of leasing its franchises or of retaining and operating them for its own benefit in any given case, and should be clothed with ample power for acquiring and managing public properties.

"The committee regards the possession of this power as essential to protect the interests of the city, and as supplying an added motive for the watchful and intelligent participation of the people in the affairs of their local government.

"The committee is also convinced that it has been demonstrated by abundant experience that in the interest of the public, when a city grants a franchise to a private corporation, association, or individual:

"The term of such grant should be limited to a definite period, not exceeding twenty-one years;

"The question whether it should be the policy of a

city to try to obtain the largest pecuniary returns in relief of taxation, or to provide for the lowest practicable charges for the services to be rendered to the citizens is a difficult one. But that each city should have the power to decide this question in its own way, in the light of its own need and experience, is clear." It is also clear that

"In addition to any other form of compensation the grantee should pay the city a percentage of the gross receipts from the exercise of the franchise;

"At the end of the period the plant of the grantee should become the property of the city if the latter should so desire, either without further compensation than the original grant, or, if additional compensation be paid, it should not in any way include or be based upon any valuation of or allowance for the franchise itself, which at the termination of the grant should *ipso facto* revert to the public;

"Every grant of a franchise should contain ample provisions enforceable by forfeiture of the grant, or otherwise, to secure efficient public service at reasonable rates."

In 1907 the National Civic Federation appointed a Commission on Public Ownership. This Commission, through its Investigating Committee, made a long and laborious and entirely independent investigation. The committee was composed of Melville E. Ingalls, President of the Board of Directors of the Big Four Railroad and chairman of the committee; Dr. Albert A. Shaw, Editor of the *Review of Reviews,* vice-chairman; Edward A. Moffett, secretary; Edward W. Demis, Superintendent of Water Works, Cleveland, Ohio; William J. Clark, General Manager of the foreign department of the General Electric Company; Professor John R. Commons, of Wisconsin University;

Charles L. Edgar, President of the Edison Electric and Illuminating Company, of Boston; Walter L. Fisher, of Chicago; Professor Frank J. Goodnow, of Columbia University; Professor John H. Gray, of Northwestern University; Timothy Healy, President of the International Brotherhood of Stationary Firemen; Daniel J. Keefe, President of the International Longshoremen's Association; Milo R. Maltbie, Member of the Public Service Commission for Greater New York; H. B. F. Macfarland, President of the Board of Commissioners of the District of Columbia; Frank J. McNulty, President of the International Brotherhood of Electric Workers, Springfield, Ill.; Professor Frank Parsons, President of the National Public Ownership League, Boston; J. W. Sullivan, Editor of *Clothing Trades' Bulletin,* New York; Talcott Williams, editorial writer of *The Press,* Philadelphia; and Albert E. Winchester, Superintendent of South Norwalk (Conn.) Electric Works. This committee was assisted by a corps of expert engineers and accountants. Its investigations and reports involved the expenditure of over $50,000 and the unremitting and uninterrupted attention of a staff of competent officials. Its statements and conclusions are, therefore, entitled to great weight. It will be noted that its recommendations largely parallel and corroborate those written by the National Municipal League's committee seven years before. The committee's more important conclusions were as follows:

"Public utilities, whether in public or private hands, are best conducted under a system of legalized and regulated monopoly.

"Public utilities in which the sanitary motive largely enters should be operated by the public.

"The success of municipal operation of public utili-

ties depends upon the existence in the city of a high capacity for municipal government.

"The committee takes no position on the question of the general expediency of either private or public ownership. The question must be solved by each municipality in the light of local conditions. What may be possible in one locality may not be in another. In some cities the companies may so serve the public as to create no dissatisfaction, and nothing might be gained by experimenting with municipal ownership. Again, the government of one city may be good and capable of taking charge of these public utilities, while in another it may be the reverse. In either case the people must remember that it requires a large class of able men as city officials to look after these matters. They must also remember that municipal ownership will create a large class of employees who may have more or less political influence.

"Our investigations teach us that no municipal operation is likely to be highly successful that does not provide for:

"First—An executive manager with full responsibility, holding his position during good behavior.

"Second—Exclusion of political influence and personal favoritism from the management of the undertaking.

"Third—Separation of the finances of the undertaking from those of the rest of the city.

"Fourth—Exemption from the debt limit of the necessary bond issues for revenue-producing utilities, which shall be a first charge upon the property and revenues of such undertaking.

"There are no particular reasons why the financial results from private or public operation should be differ-

ent if the conditions are the same. In each case it is a question of the proper man in charge of the business and of local conditions.

"We have come to the conclusion that municipal ownership of public utilities should not be extended to revenue-producing industries which do not involve the public health, the public safety, public transportation, or the permanent occupation of public streets or grounds, and that municipal operation should not be undertaken solely for profit.

"We are also of the opinion that all future grants to private companies for the construction and operation of public utilities should be terminable after a certain fixed period, and that meanwhile cities should have the right to purchase the property for operation, lease or sale, paying its fair value.

"To carry out these recommendations effectively, and to protect the rights of the people, we recommend that the various States should give to their municipalities the authority, upon popular vote under reasonable regulations, to build and operate public utilities, or to build and lease the same, or to take over works already constructed. In no other way can the people be put upon a fair trading basis and obtain from the individual companies such rights as they ought to have. We believe that this provision will tend to make it to the enlightened self-interest of the public utility companies to furnish adequate service upon fair terms, and to this extent will tend to render it unnecessary for the public to take over the existing utilities or to acquire new ones.

"Franchise grants to private corporations should be terminable after a fixed period and meanwhile subject to purchase at a fair value.

"Municipalities should have the power to enter the

field of municipal ownership upon popular vote under reasonable regulation.

"Private companies operating public utilities should be subject to public regulation and examination under a system of uniform records and accounts and of full publicity.

"Furthermore, we recommend that provision be made for a competent public authority, with power to require for all public utilities a uniform system of records and accounts, giving all financial data and all information concerning the quality of service and the cost thereof, which data shall be published and distributed to the public like other official reports; and also that no stock or bonds for public utilities shall be issued without the approval of some competent public authority.

"We also recommend the consideration of 'the sliding scale,' which has proved successful in some cases in England with reference to gas and has been adopted in Boston. By this plan the authorized capitalization is settled by official investigation, and a standard rate of dividend is fixed which may be increased only when the price of gas has been reduced. The subway contracts and their operation in Boston and New York are also entitled to full consideration.

"In case the management of public utilities is left with private companies, the public should retain in all cases an interest in the growth and profits of the future, either by a share of the profits or a reduction of the charges, the latter being preferable, as it inures to the benefit of those who use the utilities, while a share of the profits benefits the taxpayers."

CHAPTER V

THE SLIDING SCALE METHOD OF REGULATION AS APPLIED TO GAS COMPANIES IN MASSACHUSETTS

In the endeavor to provide a means of regulating the price of gas in the city of Boston that would be satisfactory both to the public and to the company, a plan was adopted similar to a system long employed in England but having no example in this country at that time. This method has been applied specifically to gas companies and is called the "Sliding Scale." Mr. Edgar N. Wrightington, Second Vice-President of The Boston Consolidated Gas Company, describes as follows the principles and results of this method as applied to gas companies in Massachusetts:[1]

The principle of the "Sliding Scale" is as follows:

A standard price of gas is established and a standard rate of dividends. Both the price and the rate of dividends are intended to be fixed on such a basis as to secure an adequate return on the money invested in the business. For every reduction in the price the company is allowed to increase correspondingly the rate of dividends which may be paid.

In Boston the standard price for gas was fixed by an Act of the Legislature at 90 cents per thousand cubic

[1] This chapter is a revision of an article in the *Proceedings* of the National Municipal League for 1910.

feet. The standard rate of dividends was fixed at 7 per cent. For every reduction of 5 cents in the price of gas the company may, during the following year, increase the dividend rate 1 per cent.

The Act provides a reserve fund for emergencies which may be set aside each year up to 1 per cent. of the capital, until the fund becomes equal to 5 per cent. of the capital stock. If an excess is earned above the amount provided in the reserve fund such excess is to be paid to the towns in which gas is sold in proportion to the miles of main in each.

Issues of additional stock are to be valued by the Board of Gas and Electric Light Commissioners. Before the new shares are offered to the stockholders of the company they shall be offered for sale by public auction, and no bid is to be accepted for less than the price fixed. Any stock not sold at auction is to be offered at the fixed price to the stockholders. Any stock so offered and not sold shall again be offered for sale at public auction.

After ten years' time, upon the petition of the company, or upon the petition of the mayor or selectmen of the cities and towns in which the company is supplying gas, the Board of Gas and Electric Light Commissioners shall have the authority to lower or raise the standard price to such extent as may justly be required by reason of greater or less burdens which may be imposed upon the company by reason of improved methods in the art of manufacture, by reason of changes in the prices of material and labor, or by reason of changes in other conditions affecting the general cost of manufacture or distribution of gas.

Since the passage of this Act, the price of gas has been twice reduced, on July 1, 1906, to 85 cents, and

on July 1, 1907, to 80 cents. At the same time the rate of dividends has been increased from 7 per cent. to 9 per cent. For the year ending June 30, 1907, the first year in which the 'Sliding Scale' was put into effect, the sales were about three and three-quarter billion cubic feet. The reduction of five cents that year amounted to about $190,000, while the extra 1 per cent. of dividends which were allowed amounted to about $150,000.

During the year ending June 30, 1908, sales were about four billion cubic feet, and the additional reduction at that time, together with the previous reduction mentioned above, resulted in a saving to the public of about $400,000. The company received an extra 1 per cent. in dividends, making the rate 9 per cent., or an increase in the total amount of about $300,000 per year for the stockholders.

In this connection it may be mentioned that the various companies which went to make up what is known as the Boston Consolidated Gas Company, were consolidated on June 15, 1905, and between that time and the date that the 'Sliding Scale' went into effect, the new Consolidated Company reduced its price of gas 10 cents per thousand feet, so that the public, between June 15, 1905, and July 1, 1907, receives a reduction in price of 20 cents per thousand cubic feet, this reduction being brought about by the consolidation and the 'Sliding Scale.'

The sales for the year ending June 30, 1910, were four billion, four hundred million cubic feet, and the saving on this amount to the public at the present price as compared with the price in June, 1905, was about $880,000. It is evident that the proportion of profits given to the public is increasing and will increase more rapidly than the amount of the profits given to the company.

It should also be stated that although the actual book value of the property represented by the investments of the company amounts to nearly $25,000,000, the capitalization is only about $15,000,000. Consequently a dividend of 9 per cent. on the capital of about $15,000,000 is equivalent to about 5½ per cent. on the actual book value of the properties.

The public is interested primarily in low prices and good service. The amount of dividends paid to the stockholders of the company does not interest the public unless such payments prevent them from getting low prices.

When the payment of extra dividends is not only prohibited unless reductions in the price are made, but increases in the rate of dividend are actually offered as a reward for reduced prices, then the public joins willingly in the partnership.

With the incentive of increased dividends before them as a result of the display of special energy and ability in conducting the business, managers of such undertakings will use every effort to introduce economies and to increase sales in order that the price may be reduced and the dividends increased. The public will receive the benefit of this increased effort in lower prices.

As far as the public is concerned nothing but praise is heard of the application of the 'Sliding Scale' in Boston, as would naturally be expected when their share of the profits has actually been greater than that of the company. Besides the reductions in price which have resulted, it is believed that the partnership with the public which this Act creates develops that mutual goodwill and confidence which are essential in the relations of all public-service corporations with the public.

CHAPTER VI

IS A RATIONAL BASIS POSSIBLE FOR TELEPHONE RATES?

DUGALD C. JACKSON, Consulting Engineer and Professor of Electrical Engineering in the Massachusetts Institute of Technology, discussed the basis for telephone rates before the Annual Meeting of the National Municipal League for 1910. This paper he revised and extended for this volume. It follows:

The rates charged for telephone service in all the important American cities grew up in accordance with expediency and as a result of the judgment and experience of the telephone officials, and in most cases have so remained. It is, therefore, not unnatural that the telephone companies have become accustomed to assert that rational methods of analysis cannot be applied to test the reasonableness of such rates. Ready means of intercommunication are now so essential a part of business and social life that it is also not unnatural for subscribers to view askance the efforts at telephone rate-making which depend only upon expediency or on the judgment of certain officials. Skepticism of the fairness of telephone rates fixed in that manner has led to investigations in a number of the more important American cities and states, and has produced reports like those made by the Merchants' Association of New York in 1905, the Special Telephone Commission of Chicago in

1907, the Board of Trade of New Orleans in 1908, the Travelers and Merchants Association of Baltimore in 1910, and the recent studies by the Commissions of the City of Los Angeles and of the states of Maryland, Massachusetts, Washington, and Wisconsin.

The activity thus stirred up seems to give promise of the general adoption of a more rational basis of charges for service. It is undeniable that the judgment displayed by telephone officials has built up their business marvelously, and has made the telephone a necessary tool of commercial and social intercourse; but the very importance thereby given to the telephone service makes indefensible any opposition to legitimate efforts to get rates on a more rational basis. Guiding principles in so complex a subject can be evolved only as the result of a thorough-going statistical study of the problem. This has not yet been completely accomplished. This article, therefore, can be only preliminary and suggestive in nature.

The startling complexity of the telephone rate problem is illustrated by the introductory statement of the Special Commission, which, in 1907, made a comprehensive report on the telephone situation in Chicago. I will quote three paragraphs from that report:

> A telephone company in a large city must face a problem in many respects more complex than that of any other public utility corporation. The water department is called upon to sell a single commodity, namely, water, and at prices which are fixed with comparative readiness. The gas company also is called upon to sell a single commodity, metered for nearly every customer, and its conditions in dealing with customers are relatively simple. It may sell some additional by-products, as coke, tar and ammonia, but the quantities and market values of these are readily arrived at. The trac-

tion company has a more complex problem than some of the other purveyors of public utilities, but even here the price paid by the several patrons is uniform and the substantial difference between patrons lies only in the lengths of the rides which they may choose to take.

The telephone problem, on the contrary, involves many complexities, partially caused by the relatively large number of classes of service which the telephone company must offer to its patrons for the purpose of fully developing the telephone service of the city, and partially by the intangible character of the electric medium with which the telephone business is carried on, the delicacy of the apparatus used, and the wide differences in the manner and extent of the use of the apparatus by the various subscribers.

If a telephone company properly extends the telephone service in the city, it must be prepared to take care of the requirements of a range of patrons as wide as the interests of the city itself, including the largest business organizations, the hotels, the newspapers, the professional men, the small business houses, and residences of all classes. It must provide apparatus for the service of each class of patrons which will enable it to furnish the service to each subscriber at an appropriate price within his means. It is desirable for the prices to be graded so that the largest user shall not pay less than his fair share of the expense of maintaining the traffic and the remuneration to the company for its investment, and equally so that the smallest user may get his telephone service at a price which is within his means and yet is reasonably remunerative to the company for its outlay.

There are four general principles that cannot be safely departed from when considering rates of a public-service company. These may be stated in the following words:

1. The company is granted certain privileges by the public for the purpose of enabling it to furnish readily

some type of service to the people, and it should be expected to furnish service fitting the needs of the people, good of its kind, and at prices which are reasonable when judged by the conditions.

2. The company must not be unnecessarily harassed, but must be afforded reasonable opportunity for economically transacting the business related to giving the service for which the company was organized; and it must be allowed to make sufficient returns on its investment to enable it to attract the best and fairest minds to the management, and to maintain a position of stable credit with the investing public.

3. A public service company in a new and developing country must see before it opportunity to earn returns on its invested capital which are large compared with those adequate in stable and thickly-settled regions, in order that it may secure the capital needful for developing its plant and extending its service to meet the apparent needs of an expanding but not yet stable population.

4. A new company, even in a stable country, ought to earn more than current rates of interest for its investors whose enterprise enables them to take the risks of establishing the business, but the rate of return on the investment may be expected to approach current rates of interest after the business has become profitable and is firmly established on fixed franchise rights covering a long period.

I will not here give the arguments to show the validity of these principles, or attempt to explain their significance. Such arguments and explanations are put forth in my article on Equitable Rate Making by Public Service Companies, which was published in the *Technology Quarterly* for December, 1908. It is sufficient

to say here that an acceptance of those general principles leads to recognizing, (1) that a sum equaling the aggregate of expense for administration, operating, repairs, depreciation, taxes and interest must be collected from its customers by the operating company, and, (2) that an equitable system of telephone rates should determine the proportions collected from the individual users with reasonable consideration of the part of the expense which is caused by the service for each of the several classes into which the users may be classified for the purposes of the service; and the classes of service should be subdivided in such a manner that subscribers with relatively similar wants will naturally group themselves together.

The ideal method of charging for telephone service is to charge each customer in proportion to the service he receives from the company, measured in quantity received and of the quality corresponding to his needs; and the charges to all customers should be as low as is consistent with the cost of operating and maintaining the property, accompanied by the payment of a fair return on the money invested. When unlimited service rates are charged, two kinds of customers, namely, business customers and residence customers, are ordinarily differentiated from each other. Each of these kinds may be grouped in various classes by arranging individual subscribers on special lines, associating two or more subscribers on a party line, providing private branch exchanges, etc., according to the needs of the customers; and the rates charged for service in the several classes may be expected to differ, on account of differences in the cost of equipment required in different classes and on account of differences in the average amounts of use of the telephone by customers in different classes.

Message rates for telephone service have decided advantages over unlimited service (flat) rates. Message rates manifestly make it possible to reduce the prices of telephone service to the small users to the smallest fair annual charge for what they actually receive; and this is particularly true if effective and convenient means for curbing extravagant use of the service are introduced, such as the introduction of prepayment service and of convenient means for promptly collecting accounts.

The smallest fair annual charge should probably be sufficient to cover reasonable interest, taxes, depreciation and current repair expenses for the portion of the plant that must be provided for the use of the average of the individual users in the subscriber's particular class, plus an amount proportional to the average number of messages transmitted from his telephone in a year.

The average expense per subscriber of supplying service in the different classes of service usual to telephone companies operating in large cities differs widely as between subscribers in the different classes. The range as between classes may be greater than 20 to 1; and the difference between the most expensive customers in the most expensive class and the most modest customers in less expensive classes is much wider. The celerity of service required by the subscriber and the amount of his traffic at hours of peak (maximum) use, have a greater effect upon the cost of telephone service than is often realized. The investment in plant occasioned solely by these factors may be many times as great as the investment required to provide the customer's connection with a central office and the means by which he may, when convenient, be connected with other subscribers. Celerity of service and amount of

traffic at time of peak use are closely related in their effects on the cost of service. If attention to subscribers' calls may be deferred by the operators, large drafts for investment in switchboards and interconnecting circuit wires and for operating expenses may be saved, compared with the investment necessary to carry out the usual American practice of providing switchboard positions and operators in sufficient numbers to answer every call within a few seconds.

All legitimate expenses of the operating company must obviously be provided out of the revenue obtained from the rates, and the rates should raise only enough revenue to meet these expenses, provided the word "expenses" is used comprehensively so as to include return on the investment. The expenses may be grouped as administrative (general), operating, current repairs, renewals (depreciation, etc.), taxes, and the return on the investment. The last item is sometimes referred to as "interest" and sometimes as "interest and profit." In the latter phrasing, I presume that the interest referred to must be taken at current rates for secured investments, and that any additional return required to support the solvency of projects referred to in the third and fourth of the above-mentioned general principles, may be called the "profit." A reasonable standing surplus is needed as a reservoir to maintain a parity of conditions from year to year, and if this has been drawn down it must be replenished as earnings warrant.

If the rates by which the revenue is raised are to be put on a rational basis, there must be some better reason for the differences between the charges for different classes of service than only the judgment of company officials, however able and experienced those officials may be. These differences now rest, in most instances,

on expediency, what the traffic will bear as shown by the growth of the service, and a certain bulk judgment of the possibilities of each situation. To improve on this, it is necessary to obtain an intimate statistical knowledge of the traffic of each class of subscribers, the plant investment required to provide that traffic, the effect of the traffic on the wear of the plant, the expenses of operation associated with the traffic, and other like information that telephone companies have not been in the habit of gathering or recording. The plant statistics, the financial statistics, and the traffic statistics must be brought into association. The telephone companies have heretofore been satisfied to hold their accounting as a species of auditing capable of showing what dividends can be paid after leaving some surplus as the result of any year of operation, and they have failed to erect the accounting into a statistical structure which will afford data for judging the relative reasonableness of their various schedules of charges. The hesitancy of company managements to enter upon the keeping of full statistical records and the making of statistical studies of the business, when not compelled to do so by the influence of keen competition such as exists in some branches of manufacturing, is perhaps not unnatural, but it is a hesitancy that needs to be overcome for the joint good of the public and the serving companies.

As a basis for determining the reasonableness of rates, the following factors must be taken into account:

(1) The annual cost entailed by the investment which is needed to care for the subscriber's wants, which investment depends not only on the cost of the plant required to connect the subscribers to the exchanges, but also on the amount of traffic which is handled over the

subscribers' lines; and (2) the cost per message entailed in caring for the subscribers' traffic.

The property required for each class of service must be maintained day by day. It must also be renewed when it becomes depreciated from any cause below an efficient condition. Taxes must be paid and interest must be earned upon the investment. The expenses occasioned by these should not be apportioned among the classes of service directly in proportion to the number of subscribers in the classes, but should be apportioned in proportions depending jointly on the number of subscribers, the character of the plant required, and the amount of traffic in the several classes. This is because these respective expenses occasioned on account of plant are influenced by all of these factors. The annual cost entailed by the investment which is needed to care for the subscribers' wants, therefore, depends upon two things. One is the mere fact of the subscribers' taking telephone service, and therefore requiring the company to furnish equipment whereby it may be ready to serve them—the cost of which equipment is affected by the kinds of lines they subscribe for, as special line, two-party, private branch exchange, etc. The other is the extent and kind of their traffic, since, in general, a large number of messages originated by a subscriber calls for a larger investment in certain portions of the plant than would be requisite to care for the wants of a subscriber with a similar line but smaller traffic thereover. The subscriber who imposes most of his messages within the hour or two of maximum business also imposes on the operating company a larger investment in plant than a subscriber who distributes an equal number of messages uniformly over the business hours.

The costs over and above the return on the investment are made up of (a) an operating cost; (b) the costs of general expenses (including taxes), superintendence, advertising, current repairs, instrument rentals, messenger expense, conduit, pole and roof rentals, and the like; and (c) the depreciation expense, including insurance against the effects of extraordinary action of the elements and the cost of reconstruction required by municipal or other statutory enactments.

The investment required per subscriber in the various classes of service is a complex quantity. For instance, each subscriber requires one sub-station and one drop wire, regardless of the character of service; special line subseribers each require one subscriber's telephone circuit with central office switchboard connection; party-line subscribers are each chargeable with a part of the cost of one subscriber's line and central office switchboard connection, etc.

Interest and depreciation (renewals) carry a larger influence in the affairs of a public service company than in average business affairs, particularly because the total annual income of a public service company is a fraction of the actual money invested instead of being a multiple thereof. It is, therefore, manifest that a detailed knowledge of the cost of producing the property required for sustaining the public service is one of the features of prime importance in the problem of arriving at rational rates. This points to the need of appraisals of the property of the telephone companies, such as have been made in Massachusetts and Wisconsin. The companies themselves seldom have adequate records of either property quantities or property costs. It may be safely asserted that no finally satisfactory rate adjustments can be accomplished without such an intimate and comprehensive

knowledge of the plant as is given by a thorough inventory and appraisal, and this is what most telephone companies do not possess.

The apportionment of investment and annual expenses between classes of service for the purpose of testing the reasonableness of existing rates or fixing new ones, requires the assumption of factors and the utilization of averages which the old-type telephone man may criticise, but such criticism is likely to be captious rather than just. The whole fabric, for instance, of charges by life insurance companies depends upon careful actuarial computations founded on the use of averages, and it works out advantageously for both the insurer and the insured. A careful insurer would have a profound distrust of an insurance company which failed to gather, record, and use all pertinent statistics in connection with its rate making.

One of the difficulties of the situation is to devise a test of the equitableness of rates which, as a test, will be satisfactorily applicable to all cases. It is urged in some quarters that the cost of specific service performed shall be the determining factor. In other quarters, it is urged that the "value of the service" to the subscribers shall be the determining factor. The latter seems but another way of proposing to make charges according to "what the traffic will bear," when that phrase is used in its objectionable sense of taking as much as the subscribers will give up. As a matter of fact, the charges made for service should be adjusted as between the company and each group of its customers, so that the company finds the dealings profitable with each group, when the full situation is considered, and each customer receives service which, as nearly as practicable, meets his requirements and costs a price which

makes the service advantageous to him; while no unjust discriminations between classes of service or customers are allowed.

In passing, I will make a note that the last phrase does not involve equal prices to all customers, because different subscribers may demand different qualities of service as well as different quantities.

It seems to me that the tests of the reasonableness or equitableness of the rates maintained by a public service corporation are found in: (1) The effectiveness and simplicity with which the schedule classifies the customers, so that the total income required to maintain the service company is collected in a manner which secures the same rate for all customers in each class obtaining service of approximately like character, though customers belonging in different classes may be subject to quite different rates because they obtain service with differences of character which essentially affect the cost per unit or impose a higher standard of service upon all classes than would be required by some of them; and (2) the certainty with which the rates secure from each class of customers the full annual operating cost of the service in that class and such a proportion of the reasonable return on the investment as the customers' traffic warrants. It then becomes a matter of public policy to determine whether a company receiving a public grant shall be privileged to take a larger proportion of profit from one class of customers than from another, the word "profit" being used to signify the aggregate return on the investment. This is relatively a new question in public policy, and the ultimate limitations of the policy must rest with experience and the judgment of our best judicial minds. It would be a manifest injury to the nation if the policy became so circumscribed that the railroads

would feel that equal proportions of profit must be earned on all parts of their systems and from all kinds of traffic. What the effect of so circumscribed a policy would be in the case of corporations giving service within the limits of a single city or a single state like many of the telephone companies is not so clear, but it probably would be undesirable.

The cost of performing the service seems to me the most important factor in determining rates in stable and well developed territory, but its application to telephone service must be made with a cautious consideration of all of the facts. Reasons for this are obvious when the problem of telephone service is carefully scrutinized. In city service, the large business users demand a celerity and accuracy (quality) for the service which adds much to its cost. Physical conditions prevent providing this fast service for one class of subscribers and not for others in intimate intercommunication therewith. But some of the latter classes, as, for instance, the residence users of moderate means, may have no interest in or care for the remarkable speed and accuracy which characterizes the telephone service of many American cities. Service of a lower grade of speed and accuracy, which is less costly to produce, would equally well satisfy the desires and needs of such subscribers. A distinction should, therefore, probably be made in class rates, so that the cost of the extraordinary speed and accuracy may be placed on the classes of subscribers who demand it.

A similar condition exists in the relations of city to rural telephone service. The business subscribers of the city demand the speediest and most accurate service obtainable at any cost, but rural subscribers are usually well satisfied by a more leisurely grade of service. How-

ever, the city conditions are forced, by the demands of the city, to be spread over both the city and the closely related rural communities. Here again, the extra cost of the speedy service presumably ought to be borne by the classes of subscribers imposing it. As the provision of the speedier service requires greater investment in the rural plant and greater operating expense than might otherwise be necessary, it is obvious that the cost of performing a specific service in the suburban communities may not be a fair basis of rates in case the cost is to be put where it belongs.

The foregoing indicates that city business rates may reasonably be expected to be higher than residence rates or the rates for service in rural districts. A differentiation between business and residence users under flat rates has heretofore been common, and this is further justified by the lower average calling rate which is usually characteristic of residence subscribers where flat rates are in vogue, and by the fact that the maximum traffic of residence subscribers may not occur at the hours when business messages are pressing upon the central offices. The relations pointed out above apparently justify an adjustment in favor of residence users of moderate requirements even when measured rates are adopted. The policy of some telephone companies apparently is in this direction.

Progress is plainly being made in the direction of rationalizing telephone rates. One of its indications is found in the syllabus of an opinion delivered in a telephone rate case by the Wisconsin Railroad Commission, which says:

> No reasonable objection can be taken to a schedule of rates based upon the actual quantity of the service rendered.

It would be difficult to quarrel with this, provided "quantity" is construed to comprehend the number of messages and a reasonable consideration of time, length, and distance of the message transmission; it being understood, however, that any comparison must rest between users needing service of equal quality. If the latter condition is not tactily understood, the statement ought to be amended so as to read that "no reasonable objection can be taken to a schedule of rates based upon the actual quality of the service required and quantity rendered."

As also showing the tendency toward rationalizing rates, I will quote from a recent finding of the Massachusetts Highway Commission in respect to telephone rates in the large city of Boston and its surrounding important suburban districts. Knowing that a certain revenue must be raised, the Massachusetts Commission pointed out:

That the district to be covered by a given telephone rate should be the territory generally used by the great majority of the subscribers therein, rather than a much larger territory, the greater portion of which is seldom used by the majority of subscribers.

That the company should collect its revenues for calls between more distant portions of the territory from those who make use of such service, rather than from those who use only local service involving the use of a much smaller portion of the plant.

That the suburban exchanges have of necessity so much occasion for calling into Boston and *vice versa* that the five-cent toll rate between Boston and suburban exchanges should be extended to cover the longest distance consistent with a well-balanced schedule and with fairness to the company.

That business service, at least, except for essentially local service, should be placed on a measured basis; and

That, so far as it is possible to do so, the rate schedule should be so made as to furnish telephone service to the small user at the lowest yearly charge that is fair and equitable, and, on that as a basis, adjusted to meet the requirements of the medium user.

Telephone companies still assert that no rational basis for telephone rates can be found. A few of the companies have adopted their rate schedules as the result of certain actuarial operations, but most of them have arrived at their schedules by the path of expediency and gradual modification. Few can support the reasonableness of their schedules on a foundation of facts produced from their accounting records. I believe that this condition not only ought to be overcome, but that it is gradually being overcome. The willingness of the telephone companies to coöperate with supervisory commissions, in gathering, and, to some degree, in studying, cost and traffic statistics, is an encouraging indication. With the accumulation of statistics which will give a clearer understanding of the cost of service and the relation of speed and accuracy of service to its cost, each modification of rate schedules under the supervision of wisely-constituted commissions ought to approach closer to a rational basis. A more effective organization of cost keeping than has yet come into vogue should be insisted upon. It must also be constantly remembered that traffic is a factor of the utmost importance, and traffic statistics must be made of record and carefully studied. This makes it important for the cost keeping to be carried out as a joint project of the accountants and engineers, rather than of the accountants alone as heretofore.

The telephone rate problem seems as complex as any

problem before the public service commissions, not excepting the problem of railroad freight rates. But telephone rates are usually made for the territory of an individual city, or, at most, an individual state, which gives ground for expecting more rapid progress in improving the basis of fixing telephone rates than can probably be reasonably expected for freight rates. This is a matter which must be treated by engineers for the facts and by judicial commissions for the conclusions, and not by legislatures or city councils acting in the ordinary processes of legislation, except as they may refer the matters to engineers or commissions. Systematic study of the factors which enter into and affect the cost of supplying telephone service usually proves capable of showing the adequacy or inadequacy of classes of telephone service existing in a city and its environs, and of disclosing the possibilities of fuller economic development of the use of this important servant of community life. If each community would provide for such a systematic study of the problem, the joint problem of reasonable and rational rates would soon be in a fair way to be solved.

CHAPTER VII

A RAPID TRANSIT POLICY FOR GREATER NEW YORK

THE Rapid Transit Problem of New York City is of greatest interest because it is one of the most difficult of all utility problems and because its solution will afford most valuable precedents for the solution of like problems in all our cities. A large constructive policy is needed. Fortunately Dr. Milo R. Maltbie, a member of the Public Service Commission for the First District, New York, since its creation in 1907, and a well-known publicist on municipal and utility questions, has worked out just such a policy. Dr. Maltbie's plans and conclusions are of deep import to all interested in utility problems, and in street railway problems in particular. His paper[1] follows:

The movement for an adequate system of rapid transit in New York City originated so far distant in the past that no definite date can be fixed. The first legislative investigation was made nearly fifty years ago, and the first rapid transit commission was appointed in 1875. Practically nothing was accomplished towards the building of lines for the next twenty years, or until the creation of the Rapid Transit Commission by the act of 1894.

[1] Read before the National Municipal League at its Cincinnati meeting in 1909.

This commission—the predecessor of the present Public Service Commission—encountered the same difficulties which had blocked the efforts of previous commissions. Existing transportation companies have always opposed, more or less strenuously, the efforts to secure construction of new lines with public or private funds. It was only after it was definitely decided in 1894 to use municipal funds to construct a subway that any definite progress was made. Even then the cry was raised that the city was in such a wretched financial condition that it could not afford to issue bonds for the construction of a subway. The constitutional debt limit was said to be in the way, "unfortunately". The courts were persuaded to disapprove the route proposed by the Rapid Transit Commission upon these grounds, causing a delay of two years. Then the corporation counsel withheld his opinion upon the form of contract for nearly a year and a half. The mayor opposed the plan, declaring that no solution of the rapid transit problem could be worked out through the use of the city's credit and urged that the needed relief must be obtained by the extension of the existing facilities—the elevated roads.

The Rapid Transit Commission then went to the legislature and urged that it be allowed to grant franchises to private companies in perpetuity. This proposal met with such a storm of protest and with such unanimous public disapproval that the project died before it was born. Indeed, it was not until the new assessments for the year 1899 had been confirmed and a constitutional amendment adopted, excluding some $30,000,000 of debt from the constitutional limitation, that the contract for the construction of the present subway from municipal funds was finally signed. Five years had

thus been practically lost, thanks to the efforts of those who wanted no more rapid transit except upon their own terms, and thanks to a bugaboo born of a wrong construction of the constitution.

The years 1907-1909 saw a duplication of the situation from 1894-1900. The Public Service Commission has proposed the construction of the rapid transit lines from public funds, and has had six contracts before the Board of Estimate and Apportionment for nearly a year and six months. The work could have been begun and would be one-half finished to-day if prompt action had been taken. At least two other lines could also have been put under way. But the debt limit cry has again been raised, an obstructive suit was brought, and only within the last few months has the Court of Appeals decided that the city had a considerable margin when it was said to have nothing.

Thus, as a result of 59 years of agitation for rapid transit and of a particularly strenuous fight during the last few years, only one subway has been built and put in operation, and only part of one other had been put under contract up to a few days ago, when the Board of Estimate approved six contracts for a portion of another line. The great increase in the borrowing capacity of the city, due to rising values of real estate, a higher valuation of property and the amendment of the constitution, has been squandered and spent upon various "public improvements", with a niggardly allowance for subways. Between January 1, 1904, and November 1, 1908, over $298,000,000 in corporate stock were issued by the city of New York. Of that amount only $19,000,000, or less than 7 per cent., were devoted to rapid transit. But a considerable portion of the stock issued was for expenditures authorized prior to January 1,

1904. Since that date down to November 1, 1908, the city issued corporate stock for expenditures authorized since January 1, 1904, amounting to $147,000,000, and of this amount less than $3,400,000 went for rapid transit, or less than 3 per cent. Who that is familiar with traffic conditions in New York City is bold enough to uphold such a distribution of municipal expenditures as wise, proper or just? But whatever may have been the ethics or the wisdom of such large expenditures for everything *but rapid transit,* the fact remains that the city was again forced into the position where the debt-limit cry was effectually raised and where further construction was blocked for a time. The embargo was raised only a few days ago, just before election.

The basic law relating to rapid transit was for many years an act passed in 1891, which created a board of rapid transit railroad commissioners. The act was general in form, but was intended to apply only to New York City. Five persons were named therein, who with the mayor, the comptroller and the president of the Chamber of Commerce were to administer the law. This board was to fill vacancies in its own membership and until 1906 was one of the few instances in the whole United States of a coöptated body. The growing dissatisfaction with this plan came to a focus in 1906 when the mayor was given power to fill vacancies, but a year later the entire commission was abolished and its powers transferred to the public service commission for the first district appointed by Governor Hughes.

The Act of 1891 was amended nearly every year after its adoption. Originally it conferred very broad powers upon the rapid transit board, but during the first half of the present decade these powers were greatly reduced, hedged about, and restricted. Many believed

that too little discretion remained, but the public generally seemed reluctant to remove the barriers. Successive amendments have made portions of the law obsolete. In other parts, it was so confused, involved and verbose that the average citizen could hardly understand it. In the attempt to escape from the long-term franchise or contract, a very short period with rigorous limitations had been adopted. Yet in many ways, the interests of the city were not amply protected, and the law cannot be said to have represented a clear, harmonious, progressive policy.

As soon as the Public Service Commission was organized, we began at once to redraft the law. A bill was presented to the legislature—a bill that was somewhat crude and imperfect in certain respects. The legislature passed it, but not until several changes had been made that were very objectionable. Governor Hughes wisely vetoed the bill, and the matter went over until 1909.

Between the two sessions, the preparation of a new law went on, and the details of the proposed amendments were revised and perfected, and several new features introduced. The bill was presented to the legislature of 1909, met with practically no opposition and was signed by the governor, no amendments opposed by the commission this time having been made. The law needs still further amendments, and details must be perfected; but as it now stands, it represents a practically harmonious policy which is probably more modern and progressive than any heretofore formulated in law. It is believed to combine adequate protection of public interests and yet to allow reasonably free range to private initiative.

Probably the most important change in the law was

the introduction of the indeterminate principle for franchises and operating leases. Under the old law, the duration of the lease was a most prolific source of discussion. Originally, the Rapid Transit Board was authorized to lease a municipally-owned road for any term of years without limitation. The first contract made thereunder was for 50 years with the privilege to the lessee of a 25-year renewal. The second contract, made three years later, was for 35 years with a 25-year renewal. The subway built under these contracts was such a success financially from the very start that immediately a movement for the limitation of the powers of the board was started. After a few years of agitation, there was passed in 1906 an amendment which restricted the duration of the original lease to twenty years and renewals to twenty years more in case the road was constructed at city expense. If the city paid for equipment as well, the original term could not exceed ten years and renewals ten years.

Even before this amendment was passed, many insisted it was so restrictive that private companies would not accept their terms. Others were equally positive that it was not only reasonable but necessary to protect the welfare of the city. As yet it has not been tried, but the short-term franchise or lease has so many objectionable features from the standpoint of the public and the company that the commission undertook to work out a plan which would not only give better control and protection to the city, but also be fairer to the operator, provided he gave good service at reasonable rates and respected the city's interests.

The plan finally perfected was based upon the indeterminate idea. Under all future franchises or operating contracts under this plan, the city will have the

right to terminate the grant or contract at any time after ten years and to take over whatever the company may have provided in the way of road or equipment upon paying an amount to be provided for in the contract, which shall not exceed the investment made by the company plus 15 per cent., and which amount shall decrease from year to year as the grant continues, until finally all the property in the street shall revert to the city free and clear without payment upon some date fixed in the grant. The date at which such reversion shall take place is to be fixed at the earliest time within which the investment made by the company in the road can be amortized out of earnings. In no case is any payment to be made to the company for the franchise or the termination of the lease or the contract. If any rapid transit line is thus taken over, the city may operate the line itself or lease it to another company or transfer it directly from the old company to the new company. In other words, the hands of the city shall be untied and left free to minister to the needs of the community as conditions from time to time demand.

The important points to be noted are the short minimum period (not more than 10 years), the limitation of the amount to be paid (cost plus 15 per cent.), the diminution of the amount as time runs on, the fact that equipment will be paid for according to its then value, and the fact that the more profitable roads will revert to the city in a shorter time than the less profitable ones. The principal reason for differentiating equipment from roadway is that the former would doubtless be allowed to deteriorate as the date approaches at which the city is to receive it free. But if the payment is to be based upon its then value, it is likely that the equipment will be

maintained in good condition. In the case of street surface railroads, this argument would apply with much force to roadway as well.

This plan will, we believe, judging from the experience of other countries and states, adequately protect whatever investment may be made by private companies and will furnish sufficient inducement to attract such private capital as may be needed. If a company knows in advance that the capital it invests will be repaid to it, less such amount as may have been accumulated in the amortization fund, in case the city decides to terminate the grant, and that if the city does not terminate the grant, it—the company—will be allowed to continue operation, it will at once perceive that the only risks it runs are those of mismanagement and misjudgment. These are the ordinary risks which every business man encounters, and in the case of urban transportation, they are at a minimum. Indeed, experience has shown that public utilities will often stand mismanagement which would immediately bankrupt a company doing a competitive business.

This principle, for which the Public Service Commission stands, means that the city shall always and continuously be in a position to control transit development. Nothing is more vital to a city than adequate transportation, and it is no more important that a city should control its streets than that it should control the special arteries of traffic, its rapid transit lines. Under an irrevocable franchise or operating contract which gives a company the exclusive right to operate a line for 30, 40, 50 or 100 years, the city loses complete control, and there is no way by which it can be regained before the expiration of the term except at enormous

expense and under such difficulties as make it impracticable.[1]

The second important principle of the new law is the sharing of profits, above a certain fixed minimum, between the operating company and the city. Under the old law an operator might make 6, 8, 10, 15, or 20 per cent. profit, and the city would receive no more in the last than in the first case. It was also true that, if the rental was too small, there was no way by which the city would receive a share of the unexpected profits. Yet it is practically impossible to determine in advance what the profits will be and to fix a rental which will be adequate from the viewpoint of the city and still fair to the operating company. Further, it is usually true that the profits vary from year to year and are normally much larger during the later years than at the beginning.

Attempting to meet these various conditions and difficulties, the commission worked out a profit-sharing plan. It provides that there will be deducted from income all operating expenses, taxes, payments to reserve and amortization funds and a return upon the investment not to exceed in any case 6 per cent. The remainder is to be divided equally between the company and the city. In other words, if the company were to make 9 per cent. in any one year after paying all charges except interest and dividends, and if the agreement fixed 5 per cent. as the point at which a sharing of profits should begin, the city would get 2 per cent., and the company 5 per cent., plus 2 per cent., the latter as an

[1] It is impossible here to discuss as fully as is desirable the relative advantages of the indeterminate grant as compared with perpetual and short-term franchises. Those who are interested may find of some value a report upon this subject to the Public Service Commission, New York City, made by me in December of last year.

extra dividend to its stockholders. If only 7 per cent. were earned, the city would get 1 per cent. and the company 1 per cent., i. e., 6 per cent. in all.

The theory upon which this plan is based is that the city, by permitting a company to lease its property or to use its streets, has become a partner in the enterprise, and that as such it ought to have a share of the profits above a fair return to capital. Further, when the city and the company are partners and share profits, each is more likely to consider the rights and interests of the other.

Special attention should be called to the use which may be made of the profits thus accruing to the city. It has been customary to turn over to the general city treasury all such receipts from public utilities. As a result the users of such services as water, gas, electricity, and transportation have paid an indirect tax, a sort of tax upon consumption. The commission considers that this is improper and unjust, that rapid transit should be furnished at cost as nearly as possible and that all receipts from the traveling public over and above cost should be used to improve, extend, or multiply transportation facilities.

The commission's plan provides, therefore, that all funds received from such sources or from the rental of any rapid transit property or rights shall be used first to pay interest and sinking-fund charges upon municipal bonds issued to build or equip rapid transit lines, and that the remainder shall go into "the Rapid Transit Fund" to be used only for the construction, equipment or operation of rapid transit lines; it is not to be used to decrease taxation. In case the city's share of the profits shall be sufficient to warrant a reduction in fares, it may be utilized for this purpose. For example, if the

city's share should be equivalent to 20 per cent. of the gross earnings upon a five-cent fare basis, the fare could be reduced thereafter to four cents. Of course, this would result in a reduction of the city's share of the net profits for the following year, the passengers having received the benefit directly.

In the original Rapid Transit Act of 1891, no provision was made for municipal construction or ownership; only private management was contemplated. When the board advertised its first line and offered a franchise for sale to the highest bidder in 1892, none appeared. In 1894 the act was revised and municipal ownership introduced as an alternative. The Rapid Transit Board was not authorized, however, to exercise discretion in the selection of a method, for it was directed to offer a franchise for sale only if "it shall not have been determined by the vote of the people . . . that such railway or railways shall be constructed for and at the expense of such city. . . ." After the adoption of plans and routes, the question was submitted to the voters in November, 1904. The result was overwhelming in favor of municipal ownership, the vote being 132,647 for and 42,916 against. Whether this vote, taken in the old City of New York before the boroughs of Brooklyn, Queens and Richmond were annexed, bound the board to municipal ownership of all lines, until another referendum authorized private ownership, is a question which has been much discussed. It has been generally admitted, however, that no franchise should be or could be granted until amendment of the law was secured.

In view of the imperative need of more rapid transit and of the various safeguards thrown about the grant, the commission believed that the public was ready to entrust to it the power to grant a franchise to a private

company. The proposed amendment to the law provided for the restoration of that power, and it met with practically no opposition. The commission may proceed, therefore, either to construct and equip with public funds or to allow a company to do so, subject to limitations already enumerated. Under certain conditions the city may operate also, but the statute contemplates private operation as a general rule and municipal operation as the exception.

The most novel feature of the whole scheme is the construction of lines from funds raised by assessment of cost in part or in whole, upon the property benefited. It has been stated that the increase in land values in northern Manhattan and the Bronx, due to the construction of the present subway, would not only have built the entire line but would have equipped it, provided rolling stock, built power-houses and paid every other capital expense, and left a margin. Is it not fair and just that the property directly benefited by the construction of a rapid transit line should bear at least a part of the cost of constructing that line? The principle has been applied to a multitude of public improvements, such as sewers, streets, parks, water-works and paving. Why should it not be applied to an improvement which more immediately and directly benefits property than any one of those just named? An increase in transportation facilities inevitably increases the value of real estate and brings population. This is not necessarily true of streets, sewers, parks or paving. It is true that, without them, people cannot live, but no matter how elaborate the system of streets, sewers, parks, etc., may be, they will amount to little unless there are transportation facilities. Not infrequently officials of transportation companies have formed or have become

interested in real-estate enterprises adjacent to new railroad lines in order to obtain for themselves or their companies a part of the increased value of land which the construction of new lines has caused.

Let no one think for a moment that the landowner is burdened in any way or that he is deprived of anything to which he is entitled by a rapid transit assessment. If the city builds a line or permits its streets to be used for its construction, and thereby increases the value of the adjoining land very considerably, the *net gain* to the community is the *increase in value less the cost of making the increase.* If the land owner gets all of the *net* gain, he has obtained not only all there is to be had, unless he takes from the community or from others, but he has obtained a profit which he has in no way aided in making any more than have other citizens and certainly not more than those who are to use the line and thus make its operation possible. Hence, by allowing the landowner to have all the *net increase,* the community has not deprived him of anything, but it has made him a present of something to which he is not entitled as a matter of legal right or equity.

If the construction development of rapid transit lines by special assessment is to be adopted in a few cases, it ought to be followed as uniformily as the facts will permit. Otherwise all localities will not be treated with equal justice. If, for example, one suburban locality with little population is provided with a rapid transit line by special assessment, and another locality with similar conditions is provided with a line without special assessment, the landowners in the first locality get only the *net* increase in values, while those who happen to live in the favored locality get much more. This is neither just nor expedient, for all parts of the city should

be given equal treatment and none selected for special favors.

Construction by special assessment also provides a method whereby all sections of the city may be provided with rapid transit upon a fair basis. Without it certain localities are given rapid transit at the expense of others. Take, for example, the present subway. It runs the length of Manhattan and to the northern part of the Bronx. The Brooklyn branch barely extends beyond the business center of that borough. The line was built from the proceeds of the city bonds without any assessment, and the operating company is paying the interest upon these bonds and a sinking fund of one per cent., sufficient to retire the bonds in about fifty years. Now the residents of northern Manhattan and the Bronx who ride the entire length of the island are carried at a loss normally. But this loss is more than offset by the profit made from carrying those who ride only a short distance in lower Manhattan. Eliminating the traffic to and from Brooklyn, which is not only self-supporting but very profitable, this means that all of the profitable business in the heart of Manhattan is used for the benefit of two narrow areas. The property owners in these districts have seen their land increase enormously in value without expenditure of one dollar upon their part. They have been given rapid transit for a five-cent fare from the Bronx to lower Manhattan and Brooklyn. But because there is not a sufficient amount of short-distance riding in Manhattan to carry long lines in Brooklyn and the Bronx, Brooklyn has been deprived and the Bronx has been blessed abundantly.

Let us suppose that a part of the cost of the northerly branches had been paid for by special assessment. In the first place, the landowners would still have reaped

a handsome profit. Secondly, the Bronx would have had a five-cent fare as it has now. But there would be no interest and sinking-fund to pay upon the amount raised by special assessment, and the operating company could extend the zone of five-cent fares further into Brooklyn or further into the Bronx if the latter were thought to be desirable. The only other way it can be done is to rent rapid transit lines at less than interest and sinking-fund, raising the deficit by taxation. But who would attempt to justify the taxation of the city at large when the result would be that landowners in certain limited area would reap a large, unearned increment therefrom?

Much more might be said regarding construction by special assessment, its numerous advantages, the various precedents and the beneficial results to the city socially and financially; but the time and space allotted me will not suffice.

Reference has been made to the part which the provision in the state constitution limiting the city debt has played in connection with rapid transit plans. It was felt that it ought not to be allowed to continue to prevent the construction from public funds of lines which are self-supporting. Thus for two years the commission has advocated an amendment which will exempt from the constitutional limitation upon the borrowing capacity of New York City, all bonds issued for rapid transit lines which are self-sustaining. Debts incurred for such purposes are not burdens upon the taxpayers, and there is no reason why the city should not be allowed to acquire revenue-producing property. Further, unless the city has the financial ability to build and equip its own lines, it is not in a position to make a fair bargain with private companies. The city would be forced

to accept what corporations may offer or do without the needed relief from present intolerable conditions. The city ought not to be limited to such alternatives. This view has been endorsed by the people of the state at a state election, and the amendment will become effective when the legislature passes an act creating the machinery for determining when an enterprise is self-sustaining.

I have attempted to outline briefly only the most characteristic features of the rapid transit law. A few other provisions may be summarized without discussion. Previously to the enactment by the legislature of our proposed amendments, the commission could not lease a rapid transit line for less than interest upon the bonds issued by the city for construction and equipment and a sinking-fund payment. If no one would pay such a rental, the commission had to operate the line. Now, there is no minimum rental; it may be much less than interest if it is thought necessary or desirable. The privilege of municipal operation remains as another alternative.

In the case of additional tracks on elevated roads and of extensions constructed by a company with its own funds, it was recognized that certain modifications must be made because of the peculiar conditions. In these cases the system of profit-sharing might not work, as it might not be possible to differentiate the receipts from the additional tracks or extensions from the receipts on the old lines. Consequently, the commission may fix a different compensation for a period not to exceed 25 years, and it is to be readjusted every 20 years thereafter. For similar reasons, the duration of the franchise may not exceed that for the existing line, so that all may terminate together.

No contract, franchise or grant may be let until bids have been invited by public advertisement, except in the few cases where only one party would bid if bids were invited. Everything has been done to open up the field and to increase the opportunity for competition where competition is possible. No important action may be taken hastily. Usually public hearings must be held. The approval of the Board of Estimate and Apportionment—the financial body of the city—must be secured upon all important matters.

CHAPTER VIII

ELEMENTS OF A CONSTRUCTIVE FRANCHISE POLICY

At the annual meeting of the National Municipal League, held in Buffalo, in November, 1910, Dr. Delos F. Wilcox, Chief of the Bureau of Franchises of the Public Service Commission for the First District, New York, read a paper on the subject of a constructive franchise policy. This paper has been revised and extended for this volume. It is of particular value, because it discusses the exact problems that must be considered in drawing up a proper public utility franchise. Dr. Wilcox says:

For the sake of simplicity and directness I shall confine myself in this discussion to street railway franchises. The principles suggested, however, will be applicable, with due allowance for modifying conditions, to franchises under which any local public utility is operated.

So far as the discussion of past and present franchise policies is concerned, I shall confine myself for the most part to the experience of New York City, for the double reason that I have a more intimate knowledge of franchise conditions there than elsewhere, and that the franchises of New York apply to public utility services of greater magnitude than are found in any other city of the United States.

The street railway franchise policy of New York City was inaugurated about sixty years ago by "The Forty Thieves," who at that time controlled the destinies of New York by reason of membership in the board of aldermen and the board of assistants. In the first franchises, granted in 1851 to the Sixth and Eighth Avenue Railroad Companies, it was provided that the city should have the right to cause the companies' rails to be removed from the streets at any time, and furthermore, that the city should have the option of buying the companies' lines at any time upon payment of the cost of construction, plus a bonus of ten per cent. The good example set by "The Forty Thieves" in these original franchises was never followed by them or by their innumerable successors in the common council and the state legislature through whose liberality the metropolis of the American continent has been despoiled of the control of its streets.

It turned out that, at the time these original franchises were granted, the City of New York did not possess lawful authority to grant street railway franchises. In 1854, after the local authorities had attempted to make grants to several companies for the construction of lines on the important north and south avenues of the city, the legislature passed a general act confirming these grants, and conferring upon cities of the state generally the right to grant street railway franchises subject to the consent of the majority in interest of the abutting property owners. Many years later, at a time when the Metropolitan Street Railway Company was gathering together all the competing lines of old New York into one gigantic monopoly, the Court of Appeals was called upon to determine the effect of the Act of 1854, confirming the original grant to the Eighth Avenue Railroad Company. The court held substantially that what the Act of 1854

did was to confirm the privileges of the company and release it from its obligations. In this manner the judiciary effectively corrected the original aldermanic error of starting right. In 1860, however, a new act, applicable to New York City alone, was passed by which the legislature arrogated to itself the exclusive right to grant street railway franchises in the streets of the metropolis. During the next fifteen years this right was liberally exercised from legislative headquarters at Albany.

The franchise policy under which the principal streets of New York were covered by local or legislative grants, or both, prior to 1875, was fundamentally wrong in three most important particulars.

In the first place, the grants were unlimited, which, under the decisions of the New York courts, means perpetual; that is to say, the privilege granted to a private company to construct street railway fixtures in a public street without a specific limitation of the period during which those fixtures may be maintained is construed in New York as a vested right that cannot be taken away either by local or by legislative action, either with or without compensation for the physical property. While such a franchise might perhaps be condemned, the city would, in that case, be compelled to pay not only for the physical property, but also the full present value of the perpetual right to occupy the street.

In the second place, the fatal mistake was made of relying upon competition in the street railway business as practically the only means of securing adequate service at reasonable rates. The state and the city absolutely failed to recognize in the charters and franchises of the various street railway companies any obligation resting upon any of these companies to extend their lines beyond the routes

originally selected by the companies themselves. The rule was laid down, although by no means always followed, that every company should within a certain time construct the entire route which it had selected, but when extensions or new routes were to be built, it was left for the existing companies or other companies, impelled solely by the desire for profit, to apply for the privilege of building them.

In the third place, no public control whatever was exercised over the disposition of the companies' gross earnings. No adequate provision was made for the continual upkeep and improvement of the lines, and no provision whatever for the writing-off of the capital or any part of it out of earnings.

The results were: perpetual franchises, a multiplicity of companies, and no check upon over-capitalization.

By 1875 the people of New York had learned that something was wrong with this franchise policy, but instead of changing the fundamental principles upon which the policy was founded they began to apply various remedies which were recommended by the political doctors from time to time. The gold cure, limited diet, bleeding and gymnastic exercises in a hobble skirt have all been tried with indifferent success. To begin with, a constitutional amendment was adopted, effective January 1, 1875, by which the legislature was forbidden to authorize the construction of a street railway without the consent of both the local authorities and the abutting property owners, or in lieu of the consent of the property owners, a determination by commissioners appointed by the general term of the Supreme Court that the proposed railway ought to be constructed and operated. This provision effectually stopped the practice of legislative grants by special acts. It also stopped the construction

of street railways for a number of years. Nine years later the legislature finally brought itself to acquiesce in the new conditions resulting from the adoption of this constitutional amendment, and passed a general street railroad law providing for the incorporation of companies and prescribing the manner in which the requisite consents of the local authorities and of the property owners or the court should be obtained. By this time the prosperity of the companies had attracted the attention of the public, and there was incorporated in the new law a provision that companies thereafter organized should pay to the city three per cent. of their gross earnings during the first five years of operation, and five per cent. thereafter. Existing companies were authorized to extend their lines, but were required to pay similar percentages on the earnings of the extensions. Such earnings were to be estimated, however, on the basis of the company's earnings per mile of track for its entire system, old and new. This policy, in the first place, established a discrimination between the old and the new companies. The new companies, which, in the nature of the case, would have to build their lines in outlying and less profitable territory, were compelled to pay a considerable tax on their receipts, while the old companies which had for many years been fattening on the profits of congested traffic in the most important downtown streets, were not required to make these payments. This general policy was calculated to discourage the building of new lines or the extension of old ones into undeveloped territory. The basis prescribed for the calculation of the earnings of extensions was such as to put a premium upon the construction of extensions, if they were to be constructed at all, by new companies organized as dummies of existing ones.

In 1886 the famous Cantor Act was passed, which required the sale of all new franchise grants in New York City at public auction. The practical effect of this act was to induce rival interests to bid against each other until a proposed franchise would be struck off at a prohibitive rental, with the result that the line would not be built at all, or at least not until after several years of financial floundering and a final readjustment and reduction of the percentage payments agreed upon. Two of the crosstown lines were, at different times, bid in for thirty or thirty-five per cent. of the gross receipts, but when they were struggling finally to get into operation about ten years later, the city, under authority of a special act of the legislature, compromised with the companies by reducing their percentage payments in excess of the minimum required under the railroad law, in one case to one-half of one per cent., and in another case to one-fifth of one per cent. In still another case, when two or three rival factions in the political and traction world were bidding against each other for an important system of routes in the Bronx, the bids were run up to several thousand per cent. of the gross receipts. At this point the city comptroller was conscience-smitten, being in doubt as to his right to strike off the franchise at such an exorbitant price. Accordingly, after some litigation and delay, the franchise was awarded to the People's Traction Company at a rental for the first five years of operation of ninety-seven per cent. of its gross receipts, in addition to the three per cent. required under the railroad law, and for the period commencing at the end of the first five years of operation and continuing in perpetuity, of ninety-five per cent. of its gross receipts, in addition to the five per cent. required under the railroad law. It is needless to say that this company's lines have never been

built. We are even in a position to say with approximate certainty that this franchise, granted some fifteen years ago, is now dead. The kind of certainty referred to is moral rather than strictly legal certainty, for in the present condition of the New York railroad law there is no such thing as legal certainty until the Court of Appeals has finally and definitely spoken upon the particular point in question. Even then, doubt may arise at a later time when the highest court affirms without opinion a decision of the lower court wholly inconsistent with an earlier decision of the higher court supported by a well-reasoned opinion.

By 1897 public opinion in New York had become sufficiently enlightened to put into the charter under which old New York, Brooklyn and various outlying municipalities were consolidated into Greater New York, certain provisions quite inconsistent with some of the franchise policies theretofore established. A limit was placed upon the duration of franchises. Original grants could no longer be made for a greater period than twenty-five years, with a provision for renewals, not to exceed twenty-five years in the aggregate, upon a revaluation of the franchise. The charter also provided that any franchise grant might contain a provision either for the reversion of the grantee's property to the city without cost at the expiration of the franchise, or for the purchase of the property at a fair valuation at that time. Although the charter did not confer upon the city any specific authority to acquire and operate existing street railway lines, it did provide that any utility acquired by reversion or purchase under the terms of a franchise thereafter to be granted might be operated by the city. In place of the old law requiring the sale of franchises at public auction, the charter required that

the value of any particular franchise and the conditions upon which it was to be granted should be determined by the Board of Estimate and Apportionment. Other important franchise provisions of the charter related to procedure in making grants, and are of no particular interest in this discussion.

Two years later, in 1899, the special franchise tax law was passed, under the provisions of which the companies' fixtures in the streets and their intangible rights were defined as real estate, to be assessed annually by a state board and to be taxed at the same rate as other real estate. A provision was inserted in this law, however, authorizing the companies to subtract from their franchise tax all payments made to the city on account of any other form of special tax. Under these provisions, not only the gross receipts tax established in 1884, but even the rentals paid by the companies for using the big bridges over the East River, are subtracted from the special franchise tax. The obvious purpose of this provision was to equalize conditions among all the companies, old as well as new. The special franchise tax has involved in all important instances heavier payments than had been made by the companies under preceding laws and franchises. The city, however, has refused to accept this equalization, and, in recent years, has followed the policy of compelling companies acquiring new street railway privileges to contract away their lawful right to subtract the percentage payments and other compensation required from their special franchise tax.

Under these various schemes for fixing the relations between the street railway companies and the public, things went from bad to worse, until the public service commissions law was enacted in 1907, upon the theory that the state should assume definite and specific super-

vision of the rates charged, the equipment provided, and the service rendered by the various companies operating within its limits. The law was grafted upon the jumble of already existing legislation, a large portion of which passed under the pseudonym of "the railroad law." No franchise policies were reversed by the establishment of the public service commissions, and no franchise laws were repealed. The people of the state set out to try a new and additional remedy by means of which, without regard to the perpetuity of the companies' rights, and in spite of the absence of specific provisions in their franchises, adequate and safe service at reasonable rates was to be wrung from the street railway companies by means of uniform accounting, publicity, and intimate supervision.

In spite of all the remedies that have been tried, the street railway franchise situation in New York City remains in an utterly chaotic condition, founded upon principles that are fundamentally faulty and that foredoom public regulation to failure, or at least to partial and halting success, unless they can be supplanted by radically different principles.

The policy of New York with regard to rapid transit franchises offers a gleam of light in a situation that would otherwise be enveloped in moonless and starless night. Away back in 1875 the congestion of population in lower Manhattan had already for a score of years impressed upon the enlightened people of the city the desperate need of rapid transit. Out of this need grew the recognition that rapid transit was a public function to be initiated by the city itself, primarily for the relief of intolerable social and economic conditions rather than as an enterprise out of which private capital could extract profits. Accordingly, provision was made for the

appointment of commissioners by the mayor to determine upon the necessity of the construction of rapid transit lines, to lay out the routes along which they should be constructed, to formulate and prescribe the plans of construction and the conditions of operation, to organize companies for the purpose of constructing and operating them, and to turn over to these companies all the rights and privileges necessary to bring about the fulfilment of the purposes for which they were incorporated. Under this early legislation, the state recognized the principle that rapid transit at least is a public function to be undertaken on the initiative of the public authorities. It failed, however, to limit the terms of the franchises granted, to recognize the principle of monopoly operation or to preserve the control and direction of rapid transit development continually in public hands. When the elevated railroads had become inadequate to meet the demands for rapid transit on Manhattan Island, the city undertook to develop subways. A new rapid transit commission was appointed, with authority to lay out routes and to grant franchises for subway construction and operation, but the enormous expense involved in subway building and the experimental character of the project interfered to prevent private capital from volunteering to accept and exercise the privileges offered as it had done in the case of the elevated roads. Accordingly, under the stress of the increasing demand for better transit facilities, the people voted for the municipal construction of subways, and finally, after long delay, and in spite of enormous difficulties, a subway was actually constructed and put in operation. The timidity of the city, however, and its failure to recognize frankly the public nature of the function to be performed, impelled it to seek the assist-

ance of private enterprise to the extent of the equipment and operation of the new transit line. It might almost be said that both in the case of the elevated roads and in the case of the subway, the city gave away rights and privileges just as far as it could induce anybody to take them. The subway was leased in advance of construction for private operation for a period of fifty years, with a renewal of twenty-five years upon a readjustment of the rentals. This lease was given without imposing upon the operating company any obligation whatever to construct or operate any extensions of the original line or to exchange transfers with the city or any other company operating extensions or connecting lines, but provision was made for the amortization of the construction cost of the subway itself, not including equipment, during the period of the lease.

The result is that, with transit needs again crowding upon transit facilities, the city has to resort to the doubtful expedient of providing for a competing subway, or of making such extensions of the existing subway system as will be acceptable from time to time during the next sixty or seventy years to the private company now in control. It is not a pleasant dilemma to face.

The rapid transit plan of 1875 recognized the necessity of public initiative and stopped there. The rapid transit plan of 1894 recognized the necessity not only of public initiative, but of construction and ownership of the subways by the city, but stopped there without insisting that the city should maintain continuous control of the development of the system which had been built with its own money. At last, by the bitter experience of more than thirty years, the people of New York were pushed another step forward in 1909. In that year the Rapid Transit Act was amended so as to make possible

the construction of subways and elevated roads under indeterminate franchises, the right being reserved to the city to terminate such grants at any time after the expiration of ten years from their original date, upon the purchase of the property. The price to be paid for the property in case of the termination of the grant was not to exceed the cost of construction plus a bonus of fifteen per cent. If the termination of the grant was delayed, the purchase price was to decrease gradually, until at the end of a definite period to be specified in the franchises, the railroads would revert to the city without cost, except for the equipment, which the city would be under obligation to purchase. During the period of operation by a private company, the gross receipts of the railroad were to be devoted, first, to the payment of operating expenses, taxes and reserve and amortization charges; second, to the payment of an annual allowance not exceeding six per cent. upon the capital actually invested by the company, and third, the net profits were to be divided equally between the city and the company. The 1909 amendments also provided for the construction of rapid transit lines with funds secured by the levy of special assessments upon property specially benefited.

An effort to enlist private capital in the construction and operation of an immense new subway system under this indeterminate franchise, and without the help of city funds, failed in the fall of 1910. Thereupon, plans for independent municipal construction and plans for coöperation between the city and the existing rapid transit companies were earnestly considered by the public service commission and the city authorities. As an outcome of long negotiations with the companies and patient consideration of the intricate problems involved, the public authorities formulated, in June, 1911, in the

so-called "McAneny Report", the general outlines of a policy intended to control all future rapid transit development in New York. Ten fundamental principles were laid down, as follows:

I.—That future rapid transit lines should follow as closely as possible the development of a logical and well-ordered city plan.

II.—That the city should provide, as rapidly as the means at its command permit, not only for relief of congested areas, but for the opening of lines through those sections that, though relatively undeveloped, offer promising opportunity for the better distribution of population.

III.—That the location of particular routes should be determined by the city, for the city's reasons, and not necessarily to conform to plans proposed by operating companies.

IV.—That the occupation of lines in the hands of private operators should be kept within the city's control, and that the city should always have the power to retake the component parts of a system capable of independent operation at any time that it may deem such a measure necessary.

V.—That where a proper measure of control can be maintained, it is good policy and correct economy to utilize and extend the facilities offered by existing rapid transit lines already at the service of the city, rather than to reduce the uses of such lines through wasteful competition.

VI.—That the available funds of the city should be used for new construction work and placed where they will aid best in preserving the city's strategic position.

VII.—That the city should have a full and fair share in all profits derived from the operation of new lines; not only as a matter of the rightful enjoyment of the fruits of its own franchises, but as a means of hastening the release of its self-supporting investments from the constitutional debt limit and of the construction of additional transportation facilities.

VIII.—That the basis of operation, in every case, shall

be such as to secure a proper contribution from the earnings of the more profitable inside or short-haul lines to help support the less profitable or outlying lines; thus assuring to the city proper service and equitable returns from each system as a system, and not as a section of scattered routes, with the gains of those most profitable reserved for private enjoyment.

IX.—That the actual operation of the lines should continue under strict control; and that the contracts for operation should embody not only the essential provisions of the Public Service act, but such other guarantees of the character of equipment furnished or the adequacy of operating service as the city may exact; and

X.—That no plan should be adopted or proposal accepted that will prevent the development of the entire city as a social and economic unit or hinder the logical extension of transportation facilities in the future.

This policy was unanimously approved by the public service commission and the board of estimate and apportionment, and may therefore be considered as the present official rapid transit policy of New York City.

Although no rapid transit grants have yet been made under the indeterminate franchise, and no lines have been constructed on the assessment plan, there has at last been established in the rapid transit law a recognition of several of the most important fundamental principles of a correct franchise policy. It is for this reason that I have referred to rapid transit development preliminary to the elaboration of my suggestion for a constructive street railway franchise policy.

In making suggestions for a model street railway franchise, we must stipulate at the beginning that existing perpetual, unlimited, or indeterminate grants and grants expiring at different times should be terminated either by purchase, by condemnation, by forfeiture, or

by negotiation. It is certainly impossible fully to inaugurate a correct franchise policy without being in a position to make this policy apply to existing lines.

We may start off, therefore, with the assumption that neither the city nor the state should show any mercy to forfeited or forfeitable franchises granted years ago in the days of dense darkness and corruption.

A constructive franchise policy must recognize the following objects to be attained:

1. Adequate and continuous service.
2. The protection of the capital invested in the business.
3. The permanent upkeep of the property at the highest practicable standard of efficiency.
4. Extensions of service as needed.
5. Reasonable and uniform rates.
6. Unity in operation, subject to public supervision.
7. The gradual amortization of the investment out of earnings.
8. Continuous and effective control of the streets by the city, through the right at any time or at reasonable intervals to take over the lines and operate them or transfer them to other agents.

I believe that the fundamental characteristic of a model franchise would be the terminable nature of the grant. I do not favor the indeterminate franchise in its Massachusetts form, under which the public authorities have a right to revoke the locations of a street railway company without making any provision for the purchase of the property. In practice, an indeterminate franchise of this nature is almost necessarily a perpetual franchise, except in the case of particular streets where new traffic conditions require the transfer of surface lines to other routes or to subways. The form of the indeter-

minate franchise which I favor would permit the city at any time after a certain initial period or at frequent intervals after such period to terminate the grant upon taking over the entire property of the company at a price to be determined by the cost of construction less the amount of the amortization fund already accumulated. This provision for purchase should not, however, apply to the revocation of locations on specific streets not integral and necessary portions of the company's route where such revocations are made necessary by changes in traffic conditions. In case of relocations, however, of any portion of the route, the net cost of the changes should be added to the capital account and become a part of the purchase price unless amortized before the city takes over the property. The purpose of the indeterminate franchise as here outlined is threefold. In the first place, it provides for continuous public control of the city's street railway policy. The desirability of municipal ownership and operation is a mooted question, but it can hardly be disputed that this generation ought not to attempt to foreclose the question against reconsideration and resettlement by generations to come. The indeterminate franchise leaves the city in full possession of its powers, so that its policy with reference to municipal ownership may be determined from time to time as future exigencies require. In the second place, the indeterminate franchise opens a way for the unification of street railway systems where competition still lingers. Where there are several operating companies under the indeterminate franchise as here described, the city would be able to bring about the consolidation of all lines by taking them over for a new company to operate, or by causing the transfer to one of the existing companies of the lines of all the other companies. The advantages

of unity of operation both from the standpoint of the public and from the standpoint of those responsible for rendering street railway service are too well recognized to require discussion here. In the third place, the indeterminate franchise even where operation is already unified and where the city does not desire to establish municipal ownership, would permit the city to transfer the entire system to new agents whenever the company already in control proves unable or unwilling to adjust itself to the conditions of intelligent and humble service. I may add that I think it would be fair to provide that, in case the city terminates the franchise for the purpose of transferring the property to another private company, a bonus of ten or fifteen per cent. should be paid in addition to the price for which the city can take over the property for municipal operation. This principle has been recognized in the Chicago settlement franchises.

In my judgment the intimate control of the street railway service demanded by modern conditions can be made most effective by the inclusion in the franchise contract of certain definite requirements in regard to the disposition of revenues. Particularly if the purpose of such intimate control is to compel adequate service at reasonable rates, the maintenance of the property at the highest practicable standard of operating efficiency, and the gradual writing off of the capital invested, it appears absolutely necessary to lay down the general rules which shall govern the company in the use of its gross earnings.

I would therefore stipulate that out of street railway revenues there shall first be paid whatever may be necessary to meet operating expenses in the broadest sense of that term. I would include in operating expenses such taxes as may be levied against the company or its property under the laws of the state. I would include

specific provision for the insurance of the car barns, power houses and rolling stock against destruction by fire. I would include specific provision for the maintenance of an accident fund, out of which shall be paid the claims of tort creditors as well as the necessary legal expenses of the company in settling or defending damage suits. To meet this particular class of expenses requires from three or four to eleven per cent. of the gross earnings of the various surface street railway systems of New York City. Under present conditions of street railway operation not less than eight per cent. of gross receipts should be set aside for the accident fund, at least until experience in the case of a particular railway proved this allowance to be unnecessarily large. Inasmuch as the cost of accidents is a legitimate charge against operating expenses during the year in which the accidents occur, and inasmuch as the companies are, on the average, perhaps two years behind in the settlement of personal-injury claims, I think it is desirable that there should be set aside from earnings a sufficient amount to keep the balance in the accident fund approximately equal to the estimated liabilities of the company on account of accidents that have already occurred, but for which settlement has not yet been made.

"Operating expenses", in the broadest sense of the term, includes the expenditure for maintenance and repairs of a sufficient amount to preserve the integrity of the property represented by the capital invested. It is obvious, however, that an operating street railway system cannot be maintained at one hundred per cent. of its reproduction value. Rails that have been in constant use for ten years may still be as good for immediate service as they were when new, and cannot be discarded, in spite of the fact that their life is half gone. It is

estimated that the highest practicable standard of maintenance would keep a street railway property up to from seventy to eighty per cent. of its reproduction value. I would, therefore, stipulate in the franchise contract that the plant should be maintained at a definite standard, say seventy-five per cent. of its value when new. In order to compel the operating company to maintain this standard, I would provide for a general maintenance and depreciation fund. Approximately twenty per cent. of the gross revenues of the railway should be put into this fund from year to year, and such portions of the fund as cannot profitably be expended on current maintenance and renewals should be permitted to accumulate for future use. This fund should be sufficient to provide for depreciation of every kind, including obsolescence, inadequacy, age and deferred maintenance, excepting only the depreciation allowed from the one hundred per cent. standard of a new plant to the seventy-five per cent. standard of an old plant maintained at its maximum efficiency. This last item of depreciation is sometimes called normal wear. It represents the necessary shrinkage of the property provided at the start by the original investment. This shrinkage is something that cannot and need not ever be restored. It should be taken care of, not by a depreciation fund, but by the early amortization of a portion of the capital. While it seems desirable to insert in the franchise contract specific percentages of gross revenues to be set aside for the various funds, provision should be made for the readjustment of these percentages from time to time if such readjustment seems necessary in the light of experience.

After providing for the payment of operating expenses of every kind and nature as hereinbefore de-

scribed, the franchise should authorize the company, as the next draft upon revenues, to withdraw a sum sufficient to pay a reasonable minimum return, say, five or six per cent., upon the amount of the capital actually invested. The amount of the investment, so far as the franchise is concerned, should not be determined by the aggregate par value of the stocks and bonds of the company outstanding at any particular time. The regulation of nominal capitalization may well be left to the state authorities. The local franchise should make definite provision, however, for determining from time to time the capital value to be carried on the company's books as the basis for the semi-guaranteed returns upon investment, and as a basis for the purchase price of the property if the city should at any time determine to take it over. Suffice it to say at this point that the capital upon which the company is allowed a fixed annual return should represent the cost of construction, including the element of preliminary and organization expenses and all other elements legitimately entering into such cost in its most comprehensive sense.

After the earnings of the road have paid a fixed minimum upon capital invested, the next item to be provided for is the amortization of the capital itself. In the first place, immediate provision should be made, if possible, for the amortization of twenty-five per cent. of the capital, representing that portion of the property which will be worn out in approximately ten years after the commencement of operation, never to be restored. Theoretically, this portion of the capital should be amortized within the first ten years of operation, but inasmuch as in the case of an entirely new road the earnings of the property during the first few years may be comparatively scant, it will not be possible in all cases to follow this

rigid rule. Regular payment to the amortization fund should be made in the shape of a certain percentage upon the capital invested rather than as a percentage of gross receipts. It would require the payment of approximately two per cent. a year, with the fund accumulating at the rate of four per cent. per annum, to provide for the retirement of twenty-five per cent. of the capital at the end of ten years. While it may not be possible in some cases to set aside this full amount in the early years of operation, there is no reason why this amortization charge should not be made before the investors are permitted to earn anything more than the fixed minimum rate of profits. After the accumulations in the amortization fund have become equal to twenty-five per cent. of the original investment, provision should be made for the permanent writing-off of that portion of the company's capital account, and thereafter the allowance for interest on investment should be based upon the capital as so reduced. What further provision shall be made for amortization after the capital has been brought down to correspond with the permanent status of the property will depend upon the controlling theory as to the permanent capitalization of utility plants. To my mind, it is of as much importance that a street railway system under private operation should be paid for as that a water-works plant under municipal operation should be paid for. It seems to me to be a desideratum in the case of all public utilities, whether municipally or privately owned, that provision should be made for the amortization of the entire capital out of earnings within a period of from twenty-five to fifty years. The increasing burden of municipal debt, even though city bonds are retired when due, practically prohibits the acquisition by the city of public utilities whose capital account has

been steadily increasing from the day they were first constructed. The legitimate burdens of the future in a growing city are always greater than the burdens of the present. Every new utility should pay for itself within a generation or two, so as to prevent the heaping-up of burdens on the shoulders of the citizens of the future. When an energetic young man goes into debt to buy a farm, he is not satisfied to pay interest indefinitely on the amount of his mortgage. He considers it a matter of plain business sense and patriotic duty to pay off the mortgage so that he and his children after him will actually own the farm. In like manner, the city that is guided by common sense and regard for its future will see to it that the public streets and all the fixtures in them are paid for as soon as possible and relieved of the enormous burden of debt that is originally laid upon them, by the issuance of municipal bonds and public-utility securities.

The amortization fund provided for in street railway franchises should be put into the hands of trustees, with authority to invest in the bonds of the company wherever that is possible, and otherwise in approved outside securities bearing interest or paying dividends at not less than a specified rate.

After providing for operating expenses, interest on investment and amortization charges, the franchise should provide for the accumulation of a contingent reserve fund for the purpose of taking care of any deficits which may occur in lean years in respect to any of the obligations already provided for. Into this reserve fund should be paid perhaps one per cent. of gross revenues, until the accumulations of the fund reach a maximum of, say, five per cent. on the amount of capital invested in the property.

Any balance of gross receipts remaining in the treasury of the company at the end of any fiscal year, after operating expenses, return on capital and amortization and contingent reserve charges have been paid, should be treated as net profits, and should be divided in some equitable proportion between the company, the city and the employees of the road. I would provide, however, that the city's share in the net profits, whatever that share may be, should be turned into the amortization fund, in addition to the regular payments to that fund, so as to hasten the time when the capital can be written off and the street railways can be operated either as a municipal or as a private enterprise without the burden of fixed charges. Careful students of public utility problems are pretty well agreed that franchise utilities should not be operated for the purpose of bringing into the city treasury a revenue for the relief of the general taxpayers.

As a tentative basis for the division of net profits, I would suggest that fifty per cent. be assigned to the city to be used as I have already indicated; twenty-five per cent. be turned over to the company as an additional return upon investment, and twenty-five per cent. be turned into an employees' benefit fund. I would provide for the distribution of this fund by trustees according to plans devised from time to time to encourage and reward efficiency, economy, and care in the operation of the road. At the present time, without taking into account the grave dangers and the enormous losses attendant upon street railway strikes, we find all too many cases where the employees, falling victims to petty temptation or attempting to imitate on a small scale the peculations of the man higher up in the street railway business, "knock down" fares or neglect to collect them

to such an extent as to cause a serious direct loss to the company and an indirect loss to the public, which must depend upon the earning power of the road for the maintenance of adequate service. It is certainly of the utmost importance to the city in the granting of a street railway franchise to a private company, that all possible provision shall be made to insure the loyalty and efficiency of the employees. The distribution to the employees of a share of the net profits of the business according to some wise plan, based on the recognition of special merit, would, I am sure, redound to the common benefit of the public and the investor.

No street railway franchise contract is adequate unless it reserves to the city the right to require from time to time the construction of extensions as needed. The proper development of the local transit system is so important a factor in the social, economic and political welfare of a city, that the right to initiate and control this development in accordance with the demands of public policy should never be surrendered by the municipal authorities. The arbitrary right to compel extensions wherever desired might be abused by an ignorant or reckless city government. It is probably necessary, therefore, that provision should be made for an appeal as to the necessity and reasonableness of a proposed extension from the order of the local authorities to a state commission or to the courts.

The procedure in cases where extensions are ordered should be very carefully worked out, so as to prevent impossible requirements on the one hand, and unreasonable delay and litigation on the other. In order to relieve the situation where extensions are needed which the company could not in justice be required to build at its own expense, the city should reserve the right to

require the company to operate the extensions constructed by the city out of its general funds or on the assessment plan, or by the property owners specially interested in securing the extensions.

In order to assist the company in making betterments and building extensions, the franchise should permit the temporary use for these purposes of the cash accumulated in the accident, depreciation and reserve, and amortization funds, provision being made for proper bookkeeping and for the replenishment of these funds whenever necessary by the issuance of new stocks and bonds. It is obvious that, if the books are kept properly, no harm can result from such use of cash accumulations, and considerable advantage will be gained by the avoidance of delay and brokerage charges incident to the retirement of old securities and the issuance of new ones in place of them.

In a street railway franchise drafted in accordance with the principles here proposed, I would provide for flexible rather than arbitrary rates. It is highly desirable that every urban community constituting a single unit of street railway operation should have uniform rates of fare, with universal transfers, subject to reasonable regulation. The particular rates to be charged, however, should be determined by the necessities of the case. There is no reason to believe that, unless possibly in the very largest urban territories, a higher rate than five cents for adults, with half fare for children between the ages of six and twelve years, would be required. We should not flinch, however, from the fixing of a rate that will meet the requirements of a constructive street railway policy as here outlined. It might be desirable to incorporate in the franchise a sliding scale of rates to be readjusted automatically, in a manner similar to that

set forth in the settlement ordinance that is now being tried out in Cleveland.

Continuity of operation is so fundamental a requisite in street railway service, that every necessary means should be taken to insure it. On this account the relations between the company and its employees whenever they are such as to threaten interruption or disintegration of service, become a matter of paramount interest to the city. I would therefore stipulate in the granting of any street railway franchise that the company shall bind itself to submit any questions of dispute arising between it and its employees to arbitration when requested to do so by the city.

There are two methods of determining the price at which a public utility may be taken over by the city or its licensee. According to one method, the property is appraised at the time of purchase. According to the other method, the value of the property is agreed upon in the franchise itself or at the time of construction. The uncertainties attendant upon appraisal at some indefinite time in the future are so great that I believe the city's interests will, in general, be better conserved if the purchase price is based upon the cost of construction less the amount of capital amortized, than by any other plan.

It seems to me, therefore, that when a street railway franchise is granted, a definite valuation should be agreed upon for the existing plant, or in the case of a new system, careful provision should be made for the determination of the cost of construction at the time the railway is built. The approval of the city should be required for all construction contracts, and the proper city department should have supervision both of plans of construction, materials used, and the actual performance of

the work. No leeway should be given for padding the construction account. Every extension or betterment should be treated as original construction, and the actual cost, audited and approved by the city authorities, should be added to capital account, provision being made for the payment of interest on additional investment and for amortization charges, the same as in the case of original construction. If the franchise is a renewal grant, and a valuation can be agreed upon that takes into account the necessary diminution of value through normal wear, it will not be necessary to make provision for the amortization of that portion of the original investment represented by the part of the property that has disappeared, never to return. In most cases, however, under existing franchises the companies have made no provision whatever for the amortization of this or any other portion of their capital account.

I am convinced that, in order to get a scientific street railway franchise policy actually established, a city may well afford, if necessary, to accept a valuation of an existing plant, properly maintained, that would include this element of capital representing property that has disappeared. Under such circumstances, the same provision would have to be made for amortization as if the plant were new.

In closing, I desire to quote a brief passage from an article by Mr. Charles V. Weston, President of the South Side Elevated Railway Company of Chicago, published in the *Electric Railway Journal* of October 14, 1910. Mr. Weston says:

"Referring specifically to the matter of speculation, if the street railways are to be recognized and tolerated as legitimate business enterprises, in which the owners and the people have a mutual and equally important in-

terest, these enterprises must be permanently removed from the field of stock manipulation, which has for its sole purpose the drawing out of the people's money in payment for that which does not represent intrinsic value."

CHAPTER IX

SUGGESTIONS FOR A MODEL STREET RAILWAY FRANCHISE

At its annual meeting in 1910, the National Municipal League appointed a Committee on Franchises to report suggestions for model franchises. A sub-committee of this committee reported suggestions for a model street railway franchise to the Richmond Conference, on November 16, 1911. The sub-committee was composed of Mr. James W. S. Peters, President of the City Club, of Kansas City, Missouri, and Dr. Delos F. Wilcox, Chief of the Bureau of Franchises for the Public Service Commission for the First District, New York. The report was as follows:

After full consideration, we are of the opinion that the circumstances under which new franchise contracts are made, varying as they do with the size of the city, with the laws and constitutional provisions of the state and the municipal charter, with the character of the franchise contracts already in force and with the physical lay-out and peculiar needs of each particular community, are such as to make it difficult, if not impossible, to draft a model franchise suitable for universal use, except possibly in the form of a general outline showing different

points which must be considered in connection with any particular franchise, and a statement of certain general principles in accordance with which, so far as practicable under local conditions, every franchise settlement should be worked out.

It is our opinion that the provisions of a street railway franchise may be simplified largely in proportion to the continuing right of regulation and control vested in the city and state authorities under existing laws, and particularly in proportion to the effectiveness of the machinery provided for the exercise of such regulatory powers. Given a properly constituted state or local commission, with sufficient authority to regulate a street railway company's stock and bond issues and to compel it to render safe and adequate service at reasonable rates, to extend its lines so as to keep pace with the needs of the community, to readjust its routes as public exigencies require, to keep accounts and make financial reports with scientific honesty, and to refrain from expending moneys and conferring favors for political purposes, and with ample funds to employ and train experts for this supervisory service, a local franchise may be reduced practically to a simple permit to occupy the streets, subject to the right of the city to terminate the grant, and upon equitable terms take over the property or transfer it to another grantee whenever public policy shall so dictate. This may be called the minimum requirement for a model franchise. The maximum is quite different, including as it does all of the points which must be covered by a complex contract between the city and its grantee where the relation between the parties is purely contractual, no continuing right of regulation being vested in the public authorities or no machinery for the exercise of such right being available.

In order to be of service to any city, no matter how unusual its position in regard to franchises may be, an outline of model franchise requirements must be explicit and worked out in great detail. In the time at our disposal it has been wholly impossible to do more than prepare a tentative outline of the matters to be kept in view in determining the relations between the state and local authorities and the patrons on the one hand, constituting the public, and the investors and operatives on the other, constituting the private beneficiary of the franchise. The presentation of such an outline will be of service in several ways. It will enable any city official or other person interested in or responsible for the drafting or criticism of a specific street railway grant, to check it up for the purpose of seeing whether or not it covers the points required by the circumstances of the case. It will serve to direct the thought of the public toward a comprehensive and logical treatment of franchise problems. It will enable the members of your committee and the members of the League in general to crystallize their franchise ideas and contribute them to a later and more elaborate general discussion of street railway problems.

The outline suggested and referred to above is submitted as an appendix to this report.

At the present time we are prepared to submit certain suggestions as to general principles that should control in the drafting of street railway franchises, as follows:

While we do not favor the granting of a street railway franchise that is exclusive in legal form, we do believe it to be for the best interest of all concerned that the entire street railway system of a given community should be operated as a unit under one comprehensive franchise. In other words, we favor a practical though not a strictly contractual monopoly.

We would even go so far as to suggest the advisability, under certain conditions, of a practical consolidation of the street railway and the electric light, heat and power systems, because of the economies to be effected by joint management.

In our opinion, every franchise should describe the specific routes over which the lines are to be operated, with an adequate provision for extensions or relocations of original lines under the terms of the franchise, thus avoiding the necessity of negotiating a new contract whenever a modification or extension of routes is to be made.

It is our opinion that one of the necessary corollaries of monopoly in street railway service is the obligation on the part of the franchise holder to extend its lines from time to time when required by the city, subject to review as to the reasonableness of the requirement. It should not be necessary to show that a particular proposed extension will be an immediate source of profit. The test of the reasonableness of an extension from a financial standpoint should be whether or not the entire system will still be able to earn a fair profit on investment after the extension is made. Within these financial limits extensions should be made so as not only to furnish transit facilities to districts already built up, but also to relieve and prevent congestion of population and provide for the esthetic development and symmetrical growth of the city.

The city should reserve the right to build extensions either out of its general fund or out of the retirement fund or by means of special assessments on benefited property, and to require the grantee of the franchise to operate such extensions as a part of its street railway system upon fair terms as to rental.

We are of the opinion that all franchises should be indeterminate within the maximum limits permitted by law, and that when the indeterminate principle is accepted as the policy of the state, such maximum limitations should be eliminated by a change in the law.

By an "indeterminate franchise" we mean a franchise that may be revoked by the city upon due notice given, either at any time, or at any time after a short minimum period, or at regular intervals not more than five years apart, such revocation in any case to be conditional upon the city's taking over the physical plant at a fair price or designating another grantee to do so.

An essential element in the purchase clause is the fixing of the price at which the property may be taken over, or the exact description of the method by which such price is to be determined in the future. In our judgment, it is preferable that the price should be agreed upon between the parties at the time of entering into the franchise contract, provision being made for adding to this price from time to time the legitimate cost of extensions and betterments. An essential element in arriving at the price originally agreed upon is a valuation of the physical property. Our reasons for preferring a present valuation to a future appraisal are that by this means the city is enabled to know at any time exactly what the property will cost if taken over; that the franchise itself, supplemented by the extension and betterment accounts, will furnish at all times a definite basis of capital investment for regulation and for amortization charges, and that all the financial relations between the city and the company will be upon the basis of protecting the actual original investments without reference to appreciation or depreciation of land values, prices of labor and material, cost of street work, etc.

The fixing of the purchase price and capital value in the contract itself releases the city from any necessity of providing for the supervision of stock issues. As to bonds, it is desirable to provide in the franchise that they shall be sold at the fair market price and shall be callable for amortization purposes at a small premium over the price at which sold.

We believe that, in order to make the city's control of its streets effective, a practicable method of substituting municipal for private ownership should be available to the city at all times. In view of the enormous burdens of a city, increasing in even greater proportion than population, it is clear that the mere provision of a purchase clause in a street railway grant does not leave the way open practically to municipal ownership in the future unless in the grant itself some method is provided for the reduction of the purchase price or for the accumulation of a fund with which to effect the purchase. If the compensation and taxes paid to the city by the franchise holder are treated as an item of revenue, to be used for the relief of general taxation, the city will not be accumulating a purchase fund. Furthermore, if the franchise holder pursues the usual policy of public service corporations, of continuous increase in capital investment without any decrease by amortization, the purchase price will become greater and greater as time goes on, and thus tend to make purchase by the city at some future time even more difficult than at the date of the contract.

We therefore suggest that either the city should set aside all or a sufficient portion of the revenues received by it from the street railway company as an amortization or sinking fund for the purchase of the company's bonds from time to time, and ultimately to offset the company's entire equity in the property, or that the company itself

be required as one of the conditions of its franchise to set aside annually in the hands of trustees a certain percentage on its investment sufficient, with the normal accumulations, to amortize the capital within a period of from thirty to fifty years. All accumulations of the amortization fund should, under the contract itself, go to reduce the purchase price in case the franchise is terminated. At the end of the amortization period, if the city has not already purchased the property, the entire physical plant will revert to the city without further cost, either to be operated by it or to be leased for operation, as public policy may at the time dictate. In either case the plant can be operated free from capital charges. This plan recognizes the essentially public nature of the street railway business, and puts it upon the same basis, as, for example, a water works system owned by the city, where the bonds issued for a certain period of years have to be paid when due out of earnings. Indeed, in the City of New York at the present time, the subway is being operated under a lease which provides for amortization of its cost out of earnings within a period of less than fifty years. The same principle prevails in the contracts under which the Boston subways are operated. Moreover, many street railway franchises granted under the Greater New York charter and accepted by companies now in operation, provide for the ultimate reversion of the entire plant located within street limits without cost to the city.

We would also suggest that the franchise contain a clause binding the grantee in case of purchase by the city to accept mortgage bonds of the city in payment, to as great an extent as would be compatible with their being readily negotiable, such bonds to be secured only upon the property and revenues of the street railway

plant, including the right in case of foreclosure to retake and operate the plant upon the same terms as before. If existing laws in any particular state do not permit the issuance of city bonds so secured, we suggest that the necessary statutory or constitutional changes be made. The new constitution of Michigan contains such an enabling provision (Article VIII, Section 24). A clause requiring the company and its mortgage holders to accept such bonds to the extent of a large part of the capital value of the property at the date of purchase will simplify the financial problems involved in the change to municipal ownership, by eliminating brokerage charges and at the same time leaving the company's investment largely undisturbed. As to bonds issued against the general credit of the city for investment in self-sustaining enterprises, the principle that they should not be included in the general debt limit was recognized by the National Municipal League more than ten years ago in the "Municipal Program," and has recently been adopted in the constitution and laws of New York. In our opinion, the general adoption of this principle would render the purchase clause in street railway franchises more practicable, while at the same time inciting the city to a careful and conservative financial policy in the management of the utility after it was taken over.

The actual fixing of the purchase price is one of the most important points to be considered in negotiating a franchise contract. If the price is swollen by too liberal an allowance for promotion, discounts on bonds, development charges, neglected maintenance, dead capital lost in experiments and mechanical changes, unexpired franchise values and other items added to the money cost of reproducing the physical property, the result may be that the earnings of the street railway under any prac-

ticable scale of fares will be insufficient to provide first-class service, yield a satisfactory return upon capital and at the same time provide for an amortization fund. In other words, excessive over-capitalization carried into the purchase price may in advance doom the experiment in municipal ownership to failure. Irrespective of his opinions as to the merits of the municipal ownership policy, no one can honestly advocate a purchase clause that is a mere sham.

We recognize that the elements entering into the purchase price will vary considerably with the particular circumstances of each case. In the case of a street railway that has long been in operation it is practically impossible to agree upon a purchase price based upon actual original cost, for the reason that inadequate or misleading methods of accounting have been all but universal. The standard most generally accepted at the present time as the basis for an appraisal is the cost of reproduction, less depreciation. Generally speaking, this rule results in a liberal valuation. The franchise owner secures the benefit of the appreciation in the value of land occupied for a power plant, car-houses, terminals and other purposes, which in the case of large and growing cities is certain to be considerable. It also secures the benefit of the appreciation in the cost of labor and materials. Whether or not this is an advantage depends upon the general trend of prices, which during the past twelve or fifteen years has been decidedly upward. A third benefit accruing to the franchise owner is the increase in the present cost of street structures over the original cost, resulting from congested traffic conditions and the occupation of the streets by other fixtures. An advantage even more important than the three already enumerated accrues to the franchise holder in cases where through a

long period of profitable operation, after the payment of liberal dividends, a portion of the earnings has still been available for extensions and betterments. Indeed, some companies that were originally grossly over-capitalized have made good their capitalization out of surplus accumulated by means of excessive rates. On the other hand, the city derives certain advantages from the adoption of the reproduction cost theory in the fixing of the purchase price. In the first place, if the property has not been kept up to the highest practicable standard the price is diminished by a depreciation allowance. In the second place, if in the past the franchise holder has changed its motive power or superseded its old equipment with new, and has made no provision for writing off its dead capital by an obsolescence fund, it will now be compelled to stand the loss, inasmuch as discarded equipment is not included in the appraisal. As generally applied, the reproduction cost theory does not take into consideration the cost of the establishment of the business as a going concern with its present earning power, although in some cases a franchise holder has not earned dividends and has even incurred serious deficits in the early years of operation. On the whole, it may be considered that the advantages to the two parties offset each other and make the reproduction cost theory the most practicable one for use as a basis in fixing the value of an already established utility where it is impracticable to get at the original cost.

Where the negotiation of a new franchise settlement involves the surrender by the company of existing unexpired franchises, held under conditions already fixed by contract, it may in some cases be necessary to include their estimated value in the purchase price. If this is done, the new franchise should certainly provide for

amortization within the original period of the old grants of at least the part of the purchase price allowed for unexpired franchise value. Care should be taken, however, in valuing an existing franchise not to take into consideration merely its earning power during its unexpired term, but also the fact that under old grants in most cases the physical investment itself would be left "up in the air" when the franchise expired. The value of the greater certainty offered by the new franchise should be counted as an offset against the unexpired earning power of the old one.

The upshot of the whole matter is, that while a city can well afford to allow a fair price in providing for the purchase of an existing utility, for the sake of getting its complex relations with the former franchise owners disentangled, it cannot afford under any circumstances to pay a price approximating the capitalization which has already bankrupted the private owners.

A street railway should be regarded as a public necessity, to be maintained at all times at the highest practicable standard of efficiency, irrespective of the expiration or termination of the franchises and irrespective of changes in ownership or in management. While this policy is necessary in any case, it becomes doubly necessary when the city enters into a contract reserving the right to take over the property at a fixed price at some future time. The franchise should, therefore, contain specific provisions in regard to the disposition of earnings, to the extent of requiring certain percentages of gross receipts to be set apart from year to year for maintenance and depreciation, including obsolescence.

In our opinion, the first consideration in the operation of a street railway should be the rendering of sufficient first-class service. In order to secure this result prac-

tically, the franchise should not only reserve to the city specific and comprehensive regulatory powers, but in all cases where there is no existing state or local authority for the purpose should make provision in detail for a supervising commission or officer, with adequate means for enforcing the contract and compelling the grantee to give such service.

The second consideration, in our judgment, should be the protection of the capital legitimately invested in this public service. The aim should be to make street railway securities approximately as safe as municipal bonds. We esteem it a disgrace to a city either to lend the use of its streets for the exploitation of the credulity of unwary investors or to impose such severe restrictions upon capital honestly invested in a public utility as to drive the franchise-holder into bankruptcy. We also think it to be a lamentable error in public policy for a city by laxity in supervision to permit the grantee of its franchises so grossly to mismanage a public utility and overload its capitalization as to deprive the public of adequate service and at the same time endanger the security of invested capital.

We consider that, while the question of street railway fares is of great importance, it is, after all, secondary to the furnishing of adequate service, to the honest protection of necessary investment, and to the gradual amortization of the capital for the benefit of the city. We think that the franchise should prescribe an initial rate of fare, but should provide for an occasional readjustment either through regulation or by means of an automatic schedule of rates specified in the grant itself. An interesting experiment with the latter policy is now being made in Cleveland, and the final results there will throw important light upon this method of adjusting

rates. Whatever rate may be in force at any particular time, we think that, as far as practicable, it should be uniform within the city limits, and that a general system of transfers without extra charge should be provided.

We have considered with care the question of compensation for franchises. In our judgment, the car riders should not be taxed for the relief of the general tax rate. While there are strong arguments for the policy of requiring a franchise holder to pay taxes at the regular rate on the value of its property outside of the streets, we think that at least all compensation in excess of this requirement, whether in the form of general city taxes, car license fees, a percentage of gross receipts or a division of net profits, should be applied either to the construction of extensions on the city's account, or to the amortization fund, or should be remitted for the benefit of service or for the reduction of rates.

The public necessity of maintaining continuous service on a street railway system is so great that in our judgment the franchise should provide some method for the arbitration of labor disputes so as effectively to prevent strikes.

We have been impressed by observation and experience with the tremendous cost in human vitality represented by the time and energy wasted in transit. It is often true that a half hour or an hour spent on a crowded, poorly lighted, badly ventilated street car at the end of a hard day's work is a greater tax upon a person's strength than an extension of the day's labor for the same time would be. The cost of transportation is not to be measured merely by the fares paid. The representatives of the city in framing a street railway franchise contract and in the regulation of street railway

service should constantly keep in mind the conservation of human energy as well as financial considerations.

Outline of Sections for a Model Street Railway Franchise

1. The grant—Renewal of existing franchise—For specific routes—General nature of construction—Obligation to begin and complete work.

2. Publication of franchise—Referendum required—Other consents required and time allowed for securing them—Property owners—The courts—Approval of state commission—Permits from city departments.

3. Future extensions—When permitted—When required—Subject to conditions of original grant—Subject to amortization plan from date of construction—Built by city or special assessments.

4. Gauge of tracks—Joint use of tracks by interurban roads—Free territory in business district—Joint use of poles and other fixtures—Switch connections with other railroads.

5. Terms of purchase clause—Price fixed in contract—Appraisal of physical property—Cost of reproduction—Unexpired franchise values—Paving—Depreciation—Appreciation in value of land and cost of labor, materials and street work—Displaced investments—Development charges—Investments from surplus earnings—Going value—Cost of future extensions—Cost of future additions and betterments—Cost of relocations—Supervisory control of new expenditures on capital account—Bonus for early termination of grant—Bonus for turning property over to new company—Method of payment—In cash—In general city bonds—In street railway certificates with security franchise—Purchase subject to outstanding mortgages—Accumulation of purchase fund out of compensation for franchise—Purchase of company's bonds for extension and betterments—Purchase of company's bonds called at request of city or at market price—Amortization out of earnings to retire capital and reduce price—Disposition of property when purchased—Transferred to new grantee—

Owned by city and leased for operation—Operated by city.

6. Duration of grant—Terminable at any time, after minimum period, or at fixed intervals, upon purchase of plant by city or city's licensee.

7. Service requirements—Standard of regularity—Standard of frequency, minimum schedule, varied schedule, "Owl" service—Transfer accommodations—Through-routing—Maximum and minimum speed—Carrying capacity required—Subject to regulation by public service commission—Character of cars—Passenger houses—Lost articles—Right to use cars assured.

8. Health and convenience—Standards of cleanliness and ventilation, heating and lighting—Subject to future ordinances, orders of public service commission and police regulations.

9. Safety requirements—Standard set for brakes, fenders and wheel-guards—Location of tracks in street—Distance between tracks—Care of poles and wires—Subject to future ordinances, orders of public service commission and street permits.

10. Public control of the streets—Plans to be filed—Tracks and fixtures to be adjusted to public improvements and other utilities—Tracks and fixtures to be removed and routes changed to meet new traffic conditions—Municipal ownership of tracks—Viaducts and bridges—Reconstruction requirements—Terminals—Subways.

11. Motive power—Provision for present or future changes.

12. Paving and paving obligations—City's right to do the work itself—Track foundations—Width of street occupied by tracks—Overhead trolleys—Underground trolleys.

13. Maintenance of street surface—Cleaning the streets—Sprinkling—Removal of snow and ice—Repair of paving—Repair of rails and conduits—Cleaning and sprinkling as city's agent.

14. Prevention of noise and jar.

15. Protection of city from damage claims.

16. Penalty fund to enforce company's obligations.

17. Rates of fare—Lower fares—Higher fares—Five-cent fares—Uniform rate—Differentiated rate—Free service—Higher rate for night service—Special rate for rush hours—Transfers—Tickets—Through service—Regulation of rates—Automatic readjustment of rates according to franchise schedules.

18. Advertising—To be artistic—Free for public proclamations—Not to be used for propaganda by company.

19. Carrying mail, express and freight—Loading of cars—Operation of cars—Hand baggage—Hauling materials for street work—Special city service.

20. Special and chartered cars—Observation cars—Funeral cars.

21. Forms of accounts—Investigations—Reports—Publicity.

22. Filing of corporate documents and reports.

23. Limitation of bonds—Sale in open market—Discounts—Brokerage—Relation to purchase price or capital value.

24. Construction account—Approval of construction contracts—Certification of cost.

25. Valuation for rate regulation and return on capital to be same as purchase price fixed in contract.

26. Disposition of earnings—Operating expenses—Maintenance and depreciation—Taxes—Interest on investment—Reserve—Profits.

27. Limitation of cost of power and supplies—Limitation of salaries paid to officers.

28. Reserve for accidents—Mode of disposing of accident claims.

29. Insurance.

30. Maintenance and depreciation—Rehabilitation of old lines—Renewals—Normal wear—Obsolescence.

31. General taxes—Franchise taxes—Car license fees—Special assessments—Compensation to city.

32. Minimum allowance on capital—Amount of invest-

ments—Rate of interest—Distinction between stocks and bonds.

33. Amortization of capital.

34. Temporary use of special funds for additions, betterments and extensions.

35. Contingent reserve.

36. Division of surplus—Sliding scale according to quality of service given, upkeep of property, and accounts rendered.

37. Employees' benefit fund.

38. Sale of property no longer needed.

39. Supervising authority to approve plans, hear complaints, audit accounts, pass on company's contracts, certify expenditures, inspect equipment, see that franchise obligations are complied with—Public utility commission—Supervising engineers—Local transportation bureau—Arbitration—Trustees for funds—Trustees to control stock of holding company—Commission for laying out and constructing rapid transit lines.

40. Obligations to employees—Hours of work—Conditions of work—Wages—Arbitration of labor disputes.

41. Protection of company against interference with its property—Cars to have right of way in streets—Right of company to sell power as a by-product.

42. Forfeiture clause—Forfeiture not to be effective as against bondholders up to safe proportion of capital value.

43. Acceptance of grant.

44. Rights of city in case of receivership.

Exhibit A. Specifications for the railway and its equipment—Character and weight of rails—Gauge of tracks—Strengthening of bridges where necessary, etc., etc.

PART III

REGULATION THROUGH MUNICIPAL PUBLIC UTILITY COMMISSIONS

CHAPTER X

THE NEED FOR PUBLIC UTILITY COMMISSIONS

THE preceding chapters have discussed franchise problems and have stated the provisions that social foresight demands that franchises should contain. More important, however, than the drawing up of a high order of franchise, as important as that is, is the securing of means by which franchise provisions may be enforced. Without enforcement they are valueless, and may as well have never been written.

The methods by which franchises have been enforced, and the means by which public service corporations have been regulated, may be roughly classified as follows: Enforcement and regulation (1) by law suit; (2) by legislative bodies; (3) by the people through the initiative and referendum; (4) by public service commissions.

Before examining the relative efficiency of each of these methods of enforcement and regulation it is necessary to get a clear idea as to what information is essential to the adequate enforcement of franchises and to the competent regulation of a city's utilities.

Before there can be any intelligent movement toward either enforcement or regulation, it is absolutely necessary to have thorough and accurate information as to the following phases of utility ownership and operation:

(I) THE LAW AND ITS INTERPRETATION.

(II) THE CONSTRUCTION, MAINTENANCE AND OPERATION OF PROPERTIES.

(III) THE TARIFFS AND RULES MADE FOR THE REGULATION OF BUSINESS.

(IV) THE ADMINISTRATION OF THE CORPORATION'S FINANCES.

Let us examine each of these in turn.

(I) *The Law and Its Interpretation.*—To secure adequate data as to the law and its interpretation, it is essential that all the franchises granted in the city, and the decisions and opinions pertinent thereto be collected and classified. To do this competently, there is needed: (1) a street record containing maps, diagrams and documents showing the location and history of all the utility fixtures above, below, or on the surface of every street in the city; (2) a franchise record containing complete and correct copies of all franchises or grants for public utility purposes; (3) a public utility record for each separate person or corporation owning or operating a public utility within the city. This record must contain copies of all the franchises granted to such concerns, copies of their annual reports, inspection reports, and other available information relating to rates, property and operation.

(II) *The Construction, Maintenance and Operation of Properties.*—Adequate information as to the construction, maintenance and operation of utility properties requires a mass of detailed information such as only competent, highly trained experts can secure. Not only is data needed as to construction, maintenance, and op-

eration expenses, but there are also needed competent reports upon the value of the physical property of such concerns, and upon the adequacy of their facilities and quality of service.

To pass any reasonable legislation as to rates or any other phase of utility regulation, necessitates a consideration of other factors than those advanced by the consumer, desirous of minimum fares, and by the corporation, desirous of maximum returns. The former will adopt the principle of "the lowest rate we can get"; the latter will adopt the principle of "what the traffic will bear". Neither is just. The company must have reasonable compensation; the consumer a fair price. To determine what reasonable compensation and a fair price is, requires detailed and accurate information not only as to the cost of construction, maintenance and operation of the utility in question, but also as to its present physical valuation, and as to what is a reasonable profit on such a venture. The most that has been done to secure such information in the past has been the appointment, by some legislative body, of experts to report on these subjects. Now, in cities of any size, no expert can make, unaided, an accurate valuation of such concerns. He can make a more or less reliable guess, but that is the best that he can do. Reliable information of this kind can be secured to the public only through the public's own experts working under the supervision of men sufficiently expert to judge as to methods and results.

(III) *The Tariffs and Rules Made for the Regulation of Business.*—This requires, in the first place, a thorough-going study of existing conditions, rates, and regulations, in order to see that no rebates are given, and that no unfair or anti-public regulations are in force. To be of any value, data of this nature cannot be col-

lected once for all, but must be gathered from day to day, and subjected to daily inspection.

As above stated, the company is entitled to a fair compensation for its capital and risks. To arrive at what is a fair compensation, it is necessary to distinguish carefully between the schedule as a whole and separate rates. The schedule as a whole, to be reasonable, must yield a fair return to the proprietors of the service. If it does not allow a fair return upon a proper capitalization, it will be declared illegal and the utilities will be authorized by the courts to raise their rates. If it does allow a fair return, a problem of even greater difficulty then arises; and that is as to what is a reasonable separate rate. It should not be necessary that the company make a given per cent. of profit upon every service it performs. It should be possible to determine that, providing the company makes a fair return upon its whole schedule, separate rates may be charged that do not give this average return. To pass upon these questions requires detailed and technical knowledge as to the proper basis for rates, as to what reasonable rates are, and as to the significance and import of the different kinds of regulations that may be adopted.

(IV) *The Administration of Finances.*—Competency in both public regulation and public ownership is dependent upon the public's possessing a complete knowledge of facts. Periodic statements from public utilities as to their financial operations will be valueless unless the public can prescribe the methods of accounting and then have full power of audit and inspection of all such accounts. The eagerness of managers to declare dividends will tend to the curtailment of operating expenses, and to the neglect of renewal and depreciation funds. In the first instance the consumer and the public

will suffer; in the second, the bondholder, because of the diminished values of his security. Power over accounts must include, to quote the Wisconsin law, power to determine "what are the proper and adequate rates of depreciation of the several classes of property of each utility", and power to require that "every public utility shall carry a proper and adequate depreciation account whenever the commission, after investigation, shall determine that such depreciation accounts can be reasonably required." Control over accounting must also specifically include full power over stock and bond issues, including knowledge as to the basis for which these issues were made and as to their market quotations. Without such control, all attempts at competent regulation can be prevented. The New Public Service Commission for the First District, under its power to approve the issuance of the securities of all concerns subject to its jurisdiction, has, after searching investigation, approved, up to 1911, $80,000,000 in securities out of $300,000,000 requested. The difference between these sums—$220,000,000—represents unwarranted watered capital, to sustain which the citizens of New York would have had to pay higher rates, and put up with poorer service.

Adequate supervision of accounts also necessitates that some basis be determined upon for a maximum capitalization that will have a direct relation to value. With most utilities capitalization and values have long since parted company. Only with an adequate basis for capitalization, such as the actual value of the property used in the public service, is competent regulation possible. Over-capitalization can then be reduced through persistent and proper measures. Adequate regulation also necessitates full control over mergers and consolidations. This power the supervising body must have,

not to prevent mergers and consolidations, but in order to get information adequate for intelligent regulation. Without scientific accounting and uniform reports it is impossible to determine what a reasonable capitalization is, and hence impossible to know when regulation is intelligent.

Turning now to the adequacy of the methods of enforcement enumerated above, we have first to discuss the adequacy of regulation and enforcement by law-suit. Our courts were long practically the only agents for the regulation of such concerns. No matter how efficient they may have been in the past, the question now is as to their efficiency in the present and as to their probable efficiency in the future. Does regulation by law-suit regulate?

To the author's mind, regulation by law-suit is wholly inadequate. It is inadequate, in the first place, because it deals only with past offenses. At the best it is but a means of redressing wrongs; it is not a means of regulation nor an adequate means of enforcing public rights. The basic principle of our judicial system is that the courts must limit themselves to deeds and acts already committed. Unless we are going to allow them to pass upon any present utility problem, and to take measures for meeting future needs, they must remain wholly incompetent for the solution of present and future wrongs in the field of municipal utilities.

But regulation by law-suit is not adequate even for the redress of past wrongs of the kind that are involved in the regulation of municipal utilities. It is entirely too slow and expensive a method for the use of the average individual in securing redress of his grievances. The New York Public Service Commission for the First District in the year 1907-08 examined 991,924 gas meters.

How many would have been tested if the individual had been compelled to have a law-suit in order to get his gas meter regulated? How many water consumers would even think of "going to law" to secure adequate water pressure for their upper floors? The problems in the regulation of municipal utilities, taken individually, are small problems. It is only when taken collectively that they loom up large. But no single individual is going to heavy expense to gain but little for himself, even though by so doing he may gain ever so much for his community.

Regulation by law-suit is too expensive a method of regulation even for the corporations. This expense might be cheerfully borne were immunity from efficient regulation to be forever secured thereby, but such will not be the case. Nothing is more patent than that virile public regulation has come to stay. It may as well be by a method that is less costly to the corporation as well as to the individual and the public.

Again, the courts are not the proper machinery for the determination of the present and future problems that must come up in the adequate regulation of municipal utilities. They do not possess the data, the special training, nor the aptitude required for passing upon such problems. The only data they could be expected to have is adequate information as to the law and its interpretation. As a rule, they do not even have this, for there is not in any city of the United States a complete collection of such data. One of the greatest services of the public service commissions later described has been the collection of material of this kind. The Franchise Bureau of the Public Service Commission of the First District in New York has given, under the ablest direction, many months of time, and the services of many

experts, to the collection of just such data, and the information is still far from complete. As to the data described under the other three heads mentioned above, the courts not only do not have it, but they have no means of securing it.

And finally, assuming that the courts might possess themselves of the required data, their training has been such as to make them unfitted for the application of it. Its application requires a long look ahead instead of a long look into the past to conform with precedents. For want of material and for want of training, our judiciary are wholly incapable of formulating and enforcing a constructive policy for the regulation of municipal utilities.

What, then, as to the second method of regulation—regulation by legislative bodies?

The discussion of this method necessitates a clear distinction between delegated legislative regulation and regulation by the legislative body itself without any aid save that which its members and committees can afford.[1] The question here is not as to whether legislative bodies, be they city or state, can adequately regulate municipal utilities with the aid of public service commissions, but whether or not they can adequately regulate municipal

[1] Public service commissions act solely as the agents of the state legislature. In the state legislature all legislative power in the state is vested. It may, however, delegate its power to subordinate commissions. This it may do by giving to these commissions limited and enumerated powers only, or by giving them full and plenary powers. In the latter case only does the commission have sufficient power to be an adequate regulative body. It must be recalled, too, that municipal legislative assemblies have only those powers that have been delegated to them by the state legislature. Hence municipal public service commissions can, at the most, exercise only those powers that the city may exercise.

utilities without the aid of such commissions. Are legislative bodies competent to handle the complex problems of regulation?

Legislative bodies do not have at hand adequate information for the regulation of rates, let alone for the regulation of services and of extensions. Rate regulation by guess is unfair to the consumer, to the public, and to the corporation. What a fair and reasonable rate is, can be determined only after careful and minute inspection of the data suggested above. This data legislative bodies do not have.

As an illustration of the impotency of regulation by legislative bodies, let us try to determine what an average municipal council could do were it confronted with the simplest of utility problems, the problem of rate regulation. In a recent daily paper, in large headlines, were the words "WILL PROBE PHONE RATES: COUNCIL APPOINTS COMMITTEE TO INQUIRE INTO THE JUSTICE OF PRESENT RATES." He who feels that the council could make any adequate inquiry as to the justness of existing rates should read Professor Jackson's preceding chapter upon, "Is a Rational Basis Possible for Telephone Rates?", and reflect upon how much success a council committee would have in arriving at a rational basis for telephone rates in their own municipality. The most that the committee could do would be to take a little desultory testimony. Without the aid of a special tribunal, such as a competent public service commission, it would be entirely dependent upon the information the corporation may volunteer to give. Again, he who thinks that a legislator can secure the data for intelligent enactments as to electric light rates, for instance, should analyze with care the appended foot-note, taken from an address by the

Honorable John H. Roemer, Chairman of the Railroad Commission of Wisconsin, in an address to the Illinois Gas Association on March 16, 1911,[1] giving the information necessary for fixing rates for electric utilities.

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[1]INFORMATION NECESSARY FOR WORKING OUT A SCHEDULE OF RATES FOR ELECTRIC UTILITIES.

I. General Information.

1. Location of plant.
2. Population of city supplied.
3. Municipal or private plant.
4. Method of generation.
   (a) Steam. (b) Hydraulic. (c) Gas. (d) Combined.
5. Is utility operated singly or in combination with a water, gas or other utility?
6. Branches of service rendered.
   (a) Lighting.
      Municipal lighting.
         Street lighting.
            Arcs. Incandescents.
         Public buildings.
            Arcs. Incandescents.
      Commercial lighting.
         Residences. Business houses. Factories.
   (b) Commercial power.

II. Valuation of Plant.

1. Book value
2. Original cost.
3. Additions or extensions since plant was first built—by years.
4. Cost of reproduction new.
5. Present value.
6. Going value.
7. Working capital.
8. Details of investment.
   A separation of investment into land, buildings, power plant equipment, distribution system, etc.
   Statement of equipment—inventory. (Continued on p. 195.)

This kind of data legislative bodies do not have. The following three chapters upon municipal commissions reveal that paid commissions with nothing else to do find it difficult to act with competence and intelligence. How can the average legislator, with numerous other legisla-

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9. Apportionment of investment.
   Where plant is a combined water and electric plant, gas and electric, etc., the investment should be apportioned between the several utilities according to actual use where this is feasible, or on some reasonable basis.
   Where street lighting, commercial lighting, and commercial power or other classes are served, an apportionment of the investment between these classes is necessary.
10. Unit cost of investment.
   For purposes of comparison, analysis and as a basis for analyzing expenses, a number of unit costs of investment should be obtained, as illustrated below:
      Power plant equipment kw. of generator capacity, consumer.
      Distribution system per mile of main; per consumer.
      Services per consumer, etc.
11. Percentage distribution of investment.
   Proportion of total plant investment represented in land, buildings, power plant, equipment, distribution, system, etc.
12. Physical Data.
   No. of boilers and rated capacity—h. p.
   No. of engines, turbines, water-wheels, etc., and rated capacity of each in kws.
   No. of generators and capacity of each, kws.
   Miles of wire—different systems or circuits.
   No. of services and meters, etc.

III. Consumer Data and Operating Statistics.

1. Connected load.
   (a) Total.
   (b) Of each class of service. (Continued on p. 196.)

tive and outside duties, be expected to act with anything like competence and intelligence? The most potent force in the corruption of American councils has been the fact that they have been expected to do this very thing. With no adequate data of his own, the alderman soon decides that he may as well take someone else's word, especially when that word is accompanied with liberal rewards.

Nor is a legislative body a proper tribunal for the enforcement of franchises. At the best its action is spasmodic. Usually it does not act at all. Through looking well to the kind of men nominated to such positions, utility concerns can readily make sure that there will

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2. Maximum demand.
   (a) Peak load on station.
   (b) Demand of each class of consumers or branch of service, and time of such demand.
3. Output.
   (a) Current generated.
   Total.
   For each class.
   (b) Current sold.
   Total.
   For each class.
   (c) Monthly variation of total sales and sales to each class.
4. Detailed consumer data.
   (a) Current sold to, and installation of each consumer for year.

IV. Earnings and Expenses.

1. Statements of earnings and operating expenses each year from date of installation.
2. Indebtedness and interest rates.
3. Stock issues and dividends paid.
4. Unit costs.

This should show the unit costs of operation each year per kw. hr. output. Principal items, such as fuel, labor and repairs should be computed on bases of

(Continued on p. 197.)

be no efficient action. Even if there should be an honest and earnest attempt to enforce existing franchise provisions, these attempts can be thwarted through the use of all the dilatory practices known. In the meantime, the municipality suffers.

The tribunal for the proper enforcement of franchise grants should be a distinct, isolated body, to the end that responsibility may be inescapably located, and that the council may be free to look after other municipal affairs.

When regulation by law-suit and by legislative bodies was proved to be a failure, it was alleged that the panacea for all utility ills was that the people should be given ultimate control through the initiative and refer-

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unit cost per unit generated, per kw. generator capacity, per consumer, per meter, per mile of wire, etc.

5. Percentage distribution of operating expenses.
   Proportion of total operating expenses each year which is represented in generation, distribution, consumption, commercial, general, and undistributed expenses and taxes.
6. Normal year.
   The year selected as that whose expenses shall be the basis of the rates must be a normal year. This may be determined by comparison of total cost and unit costs of the several items with the same items for other years. Curves showing the variation of the chief items of expense year by year may be constructed.
7. Depreciation.
   (a) "Straight line" basis. (b) "Sinking fund" basis. (c) Per cent. of total property.
8. Reasonable return.
   (a) Interest earned. (b) Local conditions as affecting rates of return to be allowed. (c) Condition of plant. (d) Service. (e) Probable future growth of utility. (f) Competition.

endum. This is the third method of regulation enumerated above.

To vest either in the people or in the corporation sole or co-equal powers of initiating franchises and other utility legislation, is to vest in one party to a contract power to make the terms for the other party. The people will have no adequate knowledge for making franchises; they certainly will have no more data than their aldermen have, and this, it has already been shown, is totally inadequate. The corporations will have the necessary data, but they will desire, not to give to the public as reasonable a franchise as this data will warrant, but to get from the public everything they can. A concrete illustration of the kind of franchises obtained where corporations may initiate and the people adopt franchises, is found in the recent franchise history in Denver.

The amendment to the Colorado constitution passed in 1902 giving to Denver home rule, and the Home Rule Charter adopted thereunder, provided that franchises and utility "measures" could be initiated either by the people or by the corporation, and that all franchises could be adopted only by vote of the city's tax-paying electors. At the municipal election held May 15, 1906, two franchises and one ordinance were thus put before the electorate. The two franchises were initiated respectively by the Tramway and the Gas and Electric Company; the ordinance was initiated by certain citizens as agents of the people. The Tramway's franchise was so drawn as to threaten endless litigation if it were not adopted. It contained just a sufficient number of concessions to make its adoption probable. It specified "certain extensions, betterments, new constructions and improvements" which the Tramway would undertake, *provided*

the franchise was adopted. Such extensions were specified as would tempt voters along all the proposed and existing lines to vote for the franchise. But the franchise contained no provisions by which these extensions and improvements could be obtained from the Tramway, should the Tramway itself not desire to complete them. Like a party platform, that is, the franchise made the maximum of promises with the minimum amount of possible enforcement of those promises. The lighting franchise is a similar kind of a contract. Drawn by the company's experts, with no representative of the people at hand to bargain for terms, it granted just as little as it dared grant and risk defeat. The ordinance initiated by the people sought to fix rates on the city's leading utilities. It was adopted but has never been enforced, as the city's political machinery has ever since been in the hands of the friends of the very concerns whose rates the ordinance sought to regulate. Denver's Water Company initiated at the municipal election in May, 1910, its own franchise and asked the tax-paying electors to adopt it. Unlike the franchises adopted in 1906, it made few concessions to the public, and, like those franchises, it omitted all penalties for the violation of the few concessions that it did make. This franchise the electors rejected, and adopted in its stead a charter amendment providing for public ownership of the water plant. The defeat of this franchise will probably cause future franchise grants to be more considerate of the rights of the people.

The referendum in Denver has thus accomplished something. It has educated the public as to the value and meaning of franchise grants—a result of the greatest possible significance. It has secured better franchises than were secured through the council; but it has secured

only a *better* franchise, it has not secured the *best* franchise—and it never will. Worse than this, it will never secure persistent and rigorous enforcement of franchises. The initiative and referendum omits the important thing, and that is a distinct administrative tribunal to look after the public's interests as the corporations have officials to look after their interests. The initiative and referendum cannot secure fair and adequate franchise grants, and it cannot enforce those grants after they are adopted. This is not, therefore, an adequate means of regulation.

This leaves for examination the third of the regulatory methods enumerated above—regulation by public utility commissions.

Utility commissions, being created by legislative enactment, have only such powers as the legislative body may care to confer upon them. Two methods of creating utility commissions have been used. In one the legislative body grants only limited and enumerated powers; in the other the legislative body vests the commission with full and complete power. In accordance with whether the first or the second of these methods are used, utility commissions are either advisory or regulative. The former is better than none, to be sure, but the adequate utility commission is the one with full regulative powers. The legal position and the administrative possibilities of a commission of this character are stated in an advanced and comprehensive decision by the Wisconsin Supreme Court in The Minneapolis, St. Paul and Sault Ste. Marie Railway Company vs. The Railroad Commission of Wisconsin. In this decision the Supreme Court upheld the Wisconsin utility law and its executive commission, the Wisconsin Railroad Commission, in the following words:

This law establishes, and thenceforth assumes, the existence of rates, charges, classifications and services, discoverable by investigation, but undisclosed, which are exactly reasonable and just. It commits to the Railroad Commission the duty to ascertain and disclose that particular rate, charge or service declared by the legislature in general terms to be lawful and to be in force.

The notion that commissions of this kind should be closely restricted by the courts, and that justice in our day can be had only in courts, is not conducive to the best results. Justice dwells with us as with the fathers; it is not exclusively the attribute of any office or class, it responds more rapidly to confidence than to criticism, and there is no reason why the members of the great Railroad Commission of this state should not develop and establish a system of rules and precedents as wise and beneficent within their sphere of action as those established by the early common-law judges. We find the statute well framed to bring this about.

Utility commissions alone can secure the data outlined above as necessary for intelligent and adequate regulation of municipal utilities. For this purpose they are created, and for this purpose they are specifically organized and equipped.

With this data they are competent to draw up franchises which will adequately protect the public's interests, and which will not be full of jokers and evasive clauses. Whether or not these franchises should then be subject to an optional referendum will depend upon conditions in the different communities. An optional referendum may not be inadvisable in order that the people may keep in full touch with what the commission is doing.

Utility commissions are also competent to enforce franchise provisions, because of their powers of daily inspection and supervision.

But the greater usefulness of public utility commissions is outside of the field of franchise enforcement and regulation. No one can foresee the improvements that a quarter of a century may bring in any public utility service, or foretell the changes in the needs of the community during that time. The attempt to do so, an attempt that all franchises must make, will usually result in placing impediments in the way of urban progress. To meet conditions as they arise is the only way that the best interests of the consumer, the public, and the utility corporation can be adequately conserved. This necessitates the existence of a public service commission with adequate powers of regulation.

Regulation by utility commissions is especially to be commended because it affords an avenue for the informal and inexpensive redress of the individual's and the public's grievances. In the first three years of the existence of the Wisconsin Commission, it disposed of but 207 formal utility cases, and 886 informal ones. Before the Public Service Commission for the Second District in New York has come 7,950 matters of sufficient importance to warrant filing, 5,397 of which were amicably arranged. This represents a great saving in law-suit expenses. It is the only adequate means by which utility problems can be solved, because it makes the redress to be obtained commensurate with the expense in obtaining it. A public tribunal where complaints can be promptly, informally and inexpensively handled is a vital step toward intelligent and competent regulation.

Regulation by utility commissions is further to be commended in that it frankly recognizes that the community is a party to all such activities and services, and hence entitled to have its own rights heard and respected. Hence, the jurisdiction of such tribunals should not be

limited to complaints only. Representing the public, it should have the power and should be willing to enter and prosecute vigorously any improvements that the public weal may demand.

Public utility commissions are the only adequate method by which reasonable, intelligent legislation as to rates, extensions and service can be passed and enforced. They alone can secure the required data. They are the only tribunals which take into adequate consideration the interests of all the parties in utility regulation—the interests of the individual, the corporation and the public. Proper service standards can be secured only through the supervision of such things as value and purity of gas, accuracy of meters, care of lamps, voltage, disturbances in electric currents, adequacy of signs and notices, methods of water purification, water and steam pressure, car wheels, car fenders, car noises, carrying capacity, reasonable peak service, expert telephone information, etc. It is just this kind of supervision that an expert administrative tribunal can give.

The courts have properly held that the power to make regulations carries with it the power to enforce them. So long as these regulations are made by the utility corporations themselves, the courts must be inclined to make presumptions in their favor, and hence make it harder for the individual and the consumer to get changes in their behalf. Now, when the initiatory power to fix the time, place, form and manner in which services must be requested and accepted are wholly with the corporation, and the presumption is in favor of the adequacy and reasonableness of those regulations, the consumer and the community have relatively little power to obtain redress of their grievances. But when the initiatory power to make regulations is vested in a public

utility commission, the presumption is in favor of rates so made. Wise action by public commissions created for this definite service, when based on adequate knowledge, the courts respect. Under such a regulative method, the consumer and the community have equal rights with the corporation in determining what regulations shall be made, what standard of services shall be offered, and what extensions shall be undertaken. The public utility commission of Wisconsin and New York, while reducing rates to some extent, have vastly improved the services of the utilities in their charge. As to the results obtained by the Wisconsin commission in these fields, Governor McGovern says in the *Engineering News* for October 12, 1911:

> Hand in hand with reduction in rates has gone an equally important improvement in service. Better service has ever been placed first, and reduction in rates made to wait upon it. Transportation facilities have been vastly improved; new stations have been built as ordered by the commission; cleanliness and sanitary precautions have been observed as never before; close connections have been made at junction points, and more and better trains have been provided. And also of express, lighting and heating, telephone and telegraph service; they have all responded to the demand for a higher standard of efficiency in numerous ways, more forcibly felt and plainly evident than it is possible for us briefly to describe.

The public utility commission is farther to be commended because through it adequate protection can be given to the investor and to the corporation. If there is regulation of a kind that will lower profits, great care must be taken that profits are not reduced so low as to be unfair and as to repel capital permanently from such concerns. While insuring the public good service

and fair rates, the utility commission must also insure the investor fair returns and the corporation entrepreneur fair profits. This it can and does do by supervising the issuance of securities in the interests of the investor, and by refraining from lowering rates and requiring improvements beyond which fair profits will warrant. The viewpoint of the utility corporation, as well as of the steel corporation, was admirably stated by Elbert H. Gary before the Stanley Investigating Committee when he said:

> We must come to enforced publicity and government control. The Steel Corporation would be glad to know where it stands. We want to be free from danger, free from criticism by the public. If we had some place we could go and say, here are the facts and figures of our property, our cost prices; tell us what we have a right to charge; if we had some governmental body we would be glad to avail ourselves of the opportunity. Corporations have no right to ignore public questions and public interests. I wish that this committee would take advantage of this opportunity to bring about the enactment of proper legislation calculated to properly protect the property interests of the country, the interests of the government, and the people at large, so as to permit us to continue business along lines of prosperity. Constructive legislation is what is needed in this country, if we are to retain our position in the ranks with the competing nations of the world.

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And, finally, regulation by public service commissions is to be commended because it isolates the utility problem. By this isolation political institutions are relieved to discharge without burdens the duties they are specifically created to perform. By this isolation responsibility can be fixed, and thus efficiency assured. By this isolation petty politics alone will not shape utility policies.

The most significant result obtained by the utility commission of Wisconsin has been this step toward the divorce of corporations from political machinery. In discussing this fact, Wisconsin's Governor, in the article previously cited, said: "Times were in Wisconsin when the railroads ran or tried to run the government of the state and the minor utilities sought to boss the cities, towns and even villages. They contributed liberally to campaign funds, urged their supporters and lobbyists to become candidates for public office, and in close election districts colonized voters in the old conventional way. Now, one and all, they are in this sense absolutely out of politics. There is, indeed, no reason now why public service corporations in Wisconsin should wish to dabble in public affairs. Their relations to the people of the state have been definitely and finally determined. They no longer have anything to gain or lose by intermeddling in politics, and apparently they have decided to retire for good. What the elimination of public service corporations from participation in political campaigns signifies in the purification of public life, no one here needs to be reminded."

If this isolation of the utility problem will but result in specialization, in efficiency, in freeing municipal government from the control of corporations, and the corporations from the grasp of petty politics, it will do more than has any other institution yet devised toward giving American cities efficient and intelligent government, as well as adequate and competent administration of their most vital interests.

A franchise is not self-enforcing. In this simple fact lies the justification for the creation of public utility commissions.

Without such commissions franchises are adminis-

tered and interpreted solely by the corporations operating them without protection to the needs of the consumer and the public. In this fact lies the urgent necessity for the creation of public utility commissions.

Intelligent regulations as to rates, services and extensions can be passed only after adequate data has been obtained, data which can be secured only by the sustained work of experts. In these facts lies the business justification for utility commissions.

A problem yet remaining to be discussed is as to whether these commissions should be city or state commissions. The three succeeding chapters discuss the duties, powers, problems, and results obtained by three typical city commissions. These chapters will throw much light upon the services municipal commissions can render, and hence will serve as a basis for the determination of whether the municipal utility commission, unaided by the state utility commission, is adequate.

CHAPTER XI

THE BOARD OF PUBLIC UTILITIES OF LOS ANGELES

HON. LEWIS R. WORKS, of Los Angeles, California, contributes, especially for this volume, the following article upon the Board of Public Utilities of Los Angeles. A leading counsellor-at-law and a member of the Commission, he writes with special authority.

State regulation of public utilities is the order of the day to such an extent that an account of the endeavors of a city in the same direction is so unique as to provoke interest at the outset. The people of Los Angeles for many years have been believers in a purely local control of the service corporations. The constitution of California has long contained a provision to the effect that rates to be charged for the furnishing of *water* to the inhabitants of municipalities shall be fixed by their governing bodies. But Los Angeles did not content itself with exercising the rate-regulating function within that narrow compass, and, under the broad system of local self-government allowed California cities by the state constitution, early inserted a section in its charter empowering the city council to fix compensation for the sale of other public utility service or commodities as well. Under this charter provision the council has annually established the rates for gas, electric lights and

power, and for telephone service, in addition to fixing the water rates under the constitutional provision mentioned.

It is only within recent years that the people of the city began to realize that a city council, elected by them, is not a proper body to fix rates. It is a truism that such a body is practically incapable of doing justice to the corporations. Its members owe their official existence to the people, and, perhaps expecting again the favor of their suffrages, consciously or unconsciously lean toward an improper basis for rate regulation. The members of an elective body constantly consider, and are pressed to consider, what the people "can afford to pay," as a criterion for the fixing of the charges, when such a consideration is not even remotely related to the subject. The price to be paid for gas, for electric lights, or for telephone service is to be fixed under certain simple and well-defined rules, just as truly as the price to be paid for ham or potatoes is fixed by the laws of supply, demand, and competition.

The creation of an independent rate-fixing tribunal for the city was considered first, in all probability, during 1907. The first public mention of the subject was undoubtedly on February 24, 1908, when a speaker before the City Council advocated the project. Interest in the plan grew, more or less steadily, from that time forth, until the people, acting under the initiative provision of the city charter, adopted an ordinance creating a Department of Public Utilities. The election was held December 7, 1909, and the ordinance carried by a vote of 16,626 to 9,696. The department was to be presided over by three commissioners. These commissioners Mayor Alexander immediately appointed.

As to the power of the board to fix rates, the ordi-

nance, which was the organic law of the department, provided no more than that the commission should recommend to the Council, "prior to the first day of March of each year a schedule of charges for the services" referred to in the enactment. The scope of the board's work was thus limited because, under provisions of the city charter, which could be varied, not by ordinance, but by charter amendment only, the Council was required to fix the charges.

The board made its initial effort as a rate-regulating body early in 1910. Its recommendations, admirable in character, considering the fact that the data gathered by it in a first attempt at regulation was necessarily incomplete, was not, in all respects, followed by the council. The question of telephone charges is annually a burning one in Los Angeles. The Council declined to accept the schedule of telephone charges recommended by the board and adopted an ordinance fixing lower rates. One of the two telephone companies immediately brought action in the United States Court and procured a temporary order to the effect that the rate established by the Council was unjust to the company. It is conceded by the city attorney that the ruling was correct and that the final decree in the case must make it permanent.

Shortly prior to the fixing of these rates the City Council appointed a committee to prepare amendments to the city charter. In order to make the commission a charter institution, instead of a mere creature of ordinance, the charter amendments proposed by this committee provided for a Department of Public Utilities. Realizing the impropriety, from the standpoint of strict justice, of allowing a legislative body elected by the people to fix charges for commodities and service to be furnished to the people, the framers of the amendments

provided by them that rates should be finally and conclusively fixed, except for the revisory power of the courts, of course, by the Board of Public Utilities. This was with the exception of rates for water, which, for the reason above stated, must be fixed by the governing bodies of cities.

In December, 1910, the Charter Revision Committee made its report to the City Council. That body, after a careful presentation of the question, positively declined to submit the amendments as they stood. The members of the Council insisted that it was their duty, as the elected servants of the people, to protect the people from the great corporations. They insisted that the Council should have the final power to fix the rates. They were finally prevailed upon to allow those rates established by the Board of Utilities to be made conclusive, in each instance, unless the Council were appealed to by some dissatisfied person, when the Board's rate might be set aside by a two-thirds vote of the Council. The amendment, thus finally framed, went before the people on March 6, 1911, and was adopted by a vote of 10,913 to 3,346. Under these charter amendments, now in force, the board is authorized:

1. To make, at such times as may be prescribed by ordinance, an investigation into the affairs of public utility servers and to compile such data as may be necessary to determine charges. Such data must include a valuation of physical properties; a detailed statement of gross and net earnings, expenses, capitalization and indebtedness; such other matters as the board may deem proper; and also such matter as may be obtainable regarding the maintenance and operation of similar utilities elsewhere. The board is given complete power of access to all property, books, and papers of the utility

companies, and also full power to require reports from them.

2. To fix rates and compensation, the same to be effective during such periods as may be prescribed by ordinance of the Council (the ordinances now in effect require rates to be fixed annually), but in no event for a period of less than one year, nor for more than three years. If any interested person objects to the rate fixed by the Board, the Council may order a rehearing. Upon such rehearing the rate may be modified in any respect whatever, but only upon a two-thirds vote of the nine members of the Council.

3. To investigate complaints against the service rendered by any company and to recommend to the Council appropriate corrective legislation.

4. To superintend the inspection of utility companies, as to their compliance with their franchise grants or with law, and as to their treatment of the public generally, and to recommend such legislation as may be proper on those questions.

5. To prepare and keep a detailed and indexed record of all public service franchises that have been granted or that may hereafter be granted by the city, with all particulars concerning the same; and to prepare and keep, so far as is practicable, a similar record of all other public franchises exercised in the city.

6. To pass upon applications for franchises. Such applications are made to the Council and must be referred to the Board before the Council may act. No franchise may be sold contrary to the recommendation of the Board except upon a three-fourths vote of the entire Council.

7. To make and enforce, subject to ordinance

adopted by the Council, rules and regulations respecting the operation of public utilities in the city.

8. To require the attendance of witnesses and the production of books and papers in any investigation or hearing conducted by it. Each member of the Board may administer oaths.

Under these charter provisions the Board of Public Utilities proceeded to announce rates for the year. Their figures, although probably just and equitable to all concerned, and certainly honestly arrived at, were met with such a storm of popular disapproval that, on June 30, 1911, the entire board resigned.

As usual, the principal difficulty was over telephone rates. There are two companies operating in the city. Though their investments and operating expenses were necessarily different and, for that reason, and on strict principles, slightly differential rates would have been proper; yet, in all things furnishing a basis for rates, the companies were so nearly alike that the Board considered that both would fare better under a single schedule, and accordingly proposed identical rates for them. The Board profited, also, by the experience gained through the litigation above mentioned and fixed a rate above that established by the Council for the year before. It was figured that the rate now proposed would allow one of the companies about a five per cent. profit and the other about seven.

The Council then, in response to many thoughtless petitions, which merely averred that the rates proposed "are too high" or "are more than the people can pay," so materially changed the rates to be collected by the company to which the Board had allowed a seven per cent. profit, that it is extremely probable that the com-

pany will be denied, for the year, the revenue to which it is entitled under the law.

It has been noted that all applications for franchise grants must first be made to the Council; but, before action is taken upon them, they must be referred to the Board for its recommendation. The city has just been witness to interesting and important events growing out of this recommendatory power of the Board.

Ever since 1901 franchises in California cities have been sold under a loosely-drawn and unsatisfactory enactment of the Legislature, known as the Broughton Act. The Charter Revision Committee, above mentioned, provided, as part of the amendment adopted by the people in March, 1911, for the relief of the city from the operation of this state franchise-selling law. Through the vote then taken, the charter now contains a provision allowing the municipality itself to control and regulate the sale of its own franchises, the procedure governing such sales to be regulated by ordinance. In the latter part of July the Board of Public Utilities, its special counsel, and the City Attorney, to whom the question had been referred for attention, presented to the Council a tentative form of ordinance covering the rules to govern future franchise sales by the city. The proposed measure was referred to a committee of the Council for consideration and public hearings upon the subject were commenced.

After the ordinance had been referred, the owner of the trolley lines of the city, encouraged by some of the city officials, applied for a franchise for certain cross-town lines through districts in which such lines had long been needed. The application was made in the hope that the franchise would be granted before the contemplated general franchise ordinance was adopted, and

hence free from the restrictions which it was expected would be required as to all franchises to be sold after the enactment of the ordinance. The application was referred to the Board. Some of the people in those portions of the city most interested in the cross-town lines began a crusade for a recommendation that the franchise be granted before the adoption of the new ordinance and with no restrictions, save such as had characterized grants under the Broughton Act.

After holding several public hearings, at which the project was most warmly discussed by the citizens, the Board recommended to the Council that the application be denied. In its written report on the subject the Board said:

We recognize the great need for cross-town car lines, not only to the people of the south and west, but to the people of all parts of the city. They are not required so badly, however, by any section of the city that we can afford to sacrifice, in providing for them, the sacred interests of time to come. It can be said of Los Angeles, probably more truly than of any other city in the world, that we are building, and building ordinarily with care and judgment, for a glorious future. We are committed to many advanced movements here which are destined, in their consummation, to play a great part in the emancipation of man from conditions which have distressingly enthralled him since the birth of the race. We have labored hand in hand for the working out of these problems and we owe it to ourselves and to the future to continue in the work. It is proper that we should make necessary sacrifices to carry it on. It will doubtless seem a sacrifice to many to be compelled to lay aside the building, even for a brief time, of these car lines; but it is the opinion of this board that there are great principles involved in the settlement, once and for all, of the franchise question in Los Angeles. That settlement will be a part of

the general work the city is doing for the freedom of mankind from all undue political, social and economic restraints.

The report was met with the most violent assault in the sections of the city most vitally interested. Public meetings were held, in those sections, for several days after the decision of the Board. But the fevered condition soon abated, especially as the people of the city at large recognized the soundness of the views of the Board, and all are now awaiting the adoption of the "model franchise ordinance," as the newspapers of the city term it.

An effort is being made to incorporate into this ordinance the most approved ideas as to the sale of municipal franchises. It is hoped that the ordinance may be so well framed as to govern franchise sales by the city for many years. A somewhat unusual spectacle is furnished in the fact that the legal representatives of the street and interurban railroads are invariably present at the hearings, and the points presented are being considered with great frankness by all concerned. Citizens are also present and state fully their views. This course of action can but redound to the interest of the city, because it will bring about a better feeling between the people and the corporations.

The city may, sooner or later, be called upon to determine whether it will give up its present system of regulation and allow its utility corporations to pass under state control. At the session of the Legislature, held early in 1911, a constitutional amendment was proposed, which provided for the creation of a State Board to have *EXCLUSIVE* control of all utilities, whether operating in or out of cities. The introduction of the measure prompted a warm discussion of the subject in the City

Club of Los Angeles, a non-partisan civic clearing-house composed of a thousand members and an institution of great value to the interests of the municipality. The debate resulted in the appointment of a special committee of nine to " report and make recommendations at the next meeting of the club."

At the succeeding meeting the committee presented a report of sufficient interest to merit its partial repetition here. It was said, *inter alia:*

Upon the broad question of state or municipal control of public utilities a difference of opinion exists in your committee. Mr. Hunsaker and Mr. Anderson are opposed to any jurisdiction of a state commission in the matter of rate-fixing or physical control of utility corporations in municipalities. The rest of your committee agree that, upon a purely logical basis, a state board having control of the issuance of stocks and bonds of public service corporations, with the means and the ability to secure a physical valuation of the property, should also have the rate-fixing power now lodged by the constitution in the municipalities of the state. It has been stated that those states which best regulate public utility corporations do so through state control. In none of these states, however, do the municipalities have the power to regulate. Having so long enjoyed the largest measure of home rule, and possessing, among other things, the right to fix rates to be charged by public utilities for services rendered, your committee believes that the people of California residing in municipalities would not be willing now to surrender this power to a state board, even if assured of the successful operation of state boards of control in Wisconsin, in New York, and elsewhere. We, therefore, have come to the unanimous conclusion that it would be unwise to attempt so to amend the state constitution at this time as to transfer the rate-making power from the municipalities to the state.

The report was adopted, together with appropriate resolutions. The result was that the measure under fire never came to vote, but another was offered in its place and adopted. This latter, adopted by popular vote at the state election of October 10, 1911, enlarges the functions of the State Railroad Commission by giving it the most ample powers over utility corporations generally, subject to the proviso, however, that utilities operated within cities are not to come under the jurisdiction of the Commission until the cities severally, by a vote of their electors, relinquish the right to control which is now guaranteed to them by the constitution. The Commission may, nevertheless, at once regulate utilities operating wider than locally, or those which operate anywhere outside of cities. The Commission is also given ample powers of control over stock and bond issues by all the utility corporations of the state, wherever operating, and to gather and preserve data of general interest concerning them.

If we may judge from the present views of her citizens, it is likely to be long before Los Angeles relinquishes her right to control utilities operated within her own limits. It is felt that the machinery now in existence is adequate to deal with any situation which may arise, provided the people, to say nothing of the City Council, can be made to understand the proper functions of such a body and can be taught to rely upon it. Experience has shown that education in the direction indicated is much needed, but there is no reason to feel that the instruction cannot be imparted.

CHAPTER XII

THE UTILITIES COMMISSION OF KANSAS CITY, MISSOURI

JACOB A. HARZFELD, President of the Commission, gives the following account of the powers and functions of the Utilities Commission of Kansas City, Missouri.

On June 1, 1905, the Supreme Court of Missouri decided that Kansas City had never been given authority to regulate the rates of such of its Public Service Corporations as operated in Kansas City under the general statutes and not by virtue of a special franchise.[1]

Kansas City had been suffering from high charges and poor service from the telephone company. This decision of the Supreme Court quickened a public demand that the city be granted full power to regulate and deal with all public service corporations using its streets and highways.

Public-spirited citizens thereupon perfected an organization with the avowed purpose of obtaining such powers for Kansas City. A large delegation of citizens, at their own expense, went to Jefferson City with a draft of a new law at the next session of the Legislature, in 1907, and introduced an Act that would accomplish this purpose. It was defeated. Thereafter they prevailed

[1] State *ex rel.* Garner vs. Telephone Company, 189 Mo. 83.

upon Governor Folk to call a special session of the Legislature. In this session they again introduced an Act granting to all cities of the state the right to fix by ordinance reasonable rates of charge for service by public utility companies and giving such cities the right to enforce such ordinance, reserving to the public utility companies the right to have the reasonableness of the rates determined by regular court proceedings. The Act also provided that all cities should have the power to establish a commission to investigate all facts and matters touching the reasonableness of rates, to enforce the production of books and papers, and to compel the attendance of witnesses, This Act, quoted in full in the appended footnote,[1] was finally passed and approved on May 8, 1907.

[1] Sec. 1. CITIES EMPOWERED TO REGULATE CHARGES FOR GAS, TELEPHONE, ETC.—All persons, firms and corporations owning or operating a telephone or telegraph line, system, or a tunnel, subway, conduit or viaduct, or engaged in furnishing gas, steam or electricity for lighting, heating or power, or engaged in furnishing water, heat and refrigeration, under franchises granted by this State or any of the cities thereof, or otherwise operating in such cities, and all persons, firms and corporations owning or operating any other public utilities under franchises granted by this State, or any of the cities thereof, or otherwise operating in such cities, are hereby required to charge no more for the service of such utilities than such rates as shall be fixed from time to time by ordinance, by the cities in this State in which such utilities are operated; and all cities in this State, whether organized under the provisions of section 16 of article IX of the Constitution, or otherwise, are hereby granted power and authority to fix, by ordinance, the rates of charge for the services of such utilities within their corporate limits, and to provide and enforce fines and penalties for the violation thereof, and to charge such rates, by ordinance, from time to time, as often as may be deemed necessary: provided, however, that such rates must be reasonable, and shall not be changed oftener than once every two years. (Continued on page 221.)

In May, 1908, Kansas City took advantage of the act and established a Public Utilities Commission of 7 members. The size of this Commission proved to be cumbersome, the salary paid to its members was merely nominal, so after one year's experience it was abandoned and a new ordinance adopted. This ordinance provided for a Commission of 3, with a Secretary, and

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Sec. 1a. AGGRIEVED PARTY MAY APPEAL.—Any such person, firm or corporation owning or operating any of the utilities mentioned in section 1 of this act and claiming to be aggrieved by the rates fixed by such ordinance shall have the remedy herein provided, to have the validity of such ordinance and the reasonableness of such rates determined by the circuit court of the county in which such city may be situated. The party so complaining shall, as plaintiff, file in the circuit court within twenty days after the passage of such ordinance, a petition against such city, as defendant, setting forth the objections to such ordinance, whereupon summons shall issue and be served upon such city, and pleadings shall be filed and proceedings had as in other cases. The plaintiff or defendant shall have the right of appeal to the proper appellate court of the State as in other cases. Said cause shall be speedily heard and determined, and shall have precedence in time in the circuit and appellate courts over other civil actions. Nothing contained in this section shall be construed to mean that any power or jurisdiction is conferred upon said courts to fix such rates or regulate the charges of any such public utilities.

Sec. 1b. CITY MAY APPOINT COMMISSION.—DUTIES.—Any such city or town may, by ordinance, provide for and establish a committee or commission to make investigation into all facts and matters touching the establishing of such just and reasonable rate or rates of charge, and after such investigation said commission shall report its findings and recommendations to the City Council And all such cities and towns shall have power and authority, by ordinance, to require and enforce the production of books and papers, and compel the attendance of witnesses before the City Council, or any duly constituted committee or commission thereof, for the purpose of ascertaining what is a just and reasonable rate or rates.

gave the Commission permanent quarters and a permanent force of inspectors.[1]

The duties of the Commission are (1) to investigate all the facts and matters relating to the establishing and fixing of reasonable rates of charge and quality and manner of service and all matters connected with or incident thereto; (2) to carefully examine the ordinances under which Public Utilities Corporations are now acting; (3) to investigate whether such corporations are complying with the terms of their franchise and all lawful ordinances of Kansas City; (4) to make reports to the Common Council and the Mayor in such matters as they may deem to be advisable; (5) to examine all ordinances under which Public Service Corporations are permitted to occupy or cross streets, alleys, or highways of the city; (6) to study the manner and location, arrangement, operation and maintenance of terminal facilities; (7) to tabulate and make record of the location of all property of public service corporations in Kansas City; (8) to make comparative investigations as to the operation of public service corporations in other cities for com-

[1] The new Commission was appointed in May, 1910. The new ordinance provides for 3 members, no more than 2 to belong to the same political party, all the members to hold office for 2 years after their appointment; the members not to be directly or indirectly interested in any contract or franchise of the City or any department thereof; nor in furnishing supplies to the City or to any contractor having a contract with the City; nor to be the owner of any stock or in any manner interested or connected with any public service corporation doing business in the City. If any member becomes interested in any manner in such affairs, he is thereby immediately disqualified to act upon the Commission. Each commissioner must take oath to all of the foregoing qualifications. The Mayor has the power of removal of any member at any time with or without cause. No member shall receive free transportation, rebate or any other gratuity from any Public Service Corporation.

parison; (9) to make orders upon public service corporations to comply with any ordinances that they have failed to comply with, and in the event of their refusal so to do, to make report thereof to the City Counselor and request the City Counselor to take legal action thereon.[1] And finally the commission is empowered to hire inspectors, not to exceed four, and hire such experts as may be necessary to aid them. In the event, however, that the total cost of such experts is more than four thousand dollars ($4,000.00) per year, a special ordinance is required.

A Counselor is provided for the Commission, appointed by the Mayor and subject to his removal. The Commission is granted power to summon witnesses, compel their attendance and testimony, and to compel witnesses to produce books and papers. The refusal of a witness to attend, or to give testimony, or to produce books or papers, is made a misdemeanor, punishable by a fine not exceeding five hundred dollars ($500.00). Every day's refusal is made a separate offense.

Since its organization the new Commission has had regular meetings, held at least weekly, and has generally met with the approval of the public in its attempt to discover and remedy inefficiency in service and operation by the utility companies.

Street Railway Companies.—The commission has made a complete, detailed investigation of the condition of every foot of track and pavement of the local Street Railway Company. It had pictures made of the worst places, over one thousand in number. It then summoned the President of the Company before it, and or-

[1] The duty is imposed upon the City Counselor to take all steps and proceedings to compel such public service corporations to cease to violate such franchise obligations.

dered the report read and the pictures shown. The President of the Company immediately promised to put men to work. This he did, though he thereby increased the company's expenditure for this class of work about seventy-five per cent. (75%) over the previous year. The contract between the Street Railway Company and the City provided that the Company should build extensions to their lines as required by the Common Council in an amount equal to two miles of double track per year. For the first time a complete survey was made and it was discovered that, under its agreement, the Company had not fulfilled its obligations to the City and could be required to make a great many more miles of extensions.

The Commission made an investigation into the crowded condition of the street cars in Kansas City, and made a complete observation on four different days on each line entering the business district. It found that cars with a seating capacity of forty-four often carried more than one hundred people. Tabulated statements of these conditions were placed upon file showing the exact condition of every car. This clearly indicated the need of more cars. Sixty new cars were added during the year, and twenty-five more cars are now being provided.

In making this investigation it was discovered that the routing of the cars was responsible for some of the overcrowding. Hence a detailed investigation was made showing the number of cars passing given points at certain times. As a result of this investigation a re-routing ordinance was passed which relieved the congestion.

Kansas City owns a beautiful park of more than thirteen hundred acres, the playground of the City. It was discovered that the present car line thereto was not ade-

quate to serve the people who desired to use this playground. The Commission decided that a new line should be built in the near future to approach this park from another direction.

Gas Companies.—Kansas City is supplied with natural gas. A local company, which has the contract directly with the City, owns the distributing system. Another company owns the supplying system and the pipe lines running from Kansas City to the Oklahoma gas fields. The local company refused, whenever possible, to extend gas mains unless it saw a profit in those mains. The Commission took upon itself the duty of seeing to it that all complaints were adjusted and that ordinances were properly prepared to the end that extensions should be made and made without unnecessary delay.

During certain days in winter, when the thermometer was below zero, certain portions of the City suffered on account of the lack of pressure. While some districts had a pressure sufficient for heating, cooking, and lighting, other districts were without enough gas to supply light. Under the direction of the Commission, the pressure, on such days as these, was equalized all over the City so that no portion was entirely without gas.

An investigation showed that the supplying company did not have adequate pipe line facilities to the fields nor adequate storage capacity in Kansas City. After an amicable meeting with the Company, it was agreed that a storage tank of 5,000,000 cubic feet capacity would immediately be built. It is now about completed. This will greatly relieve the situation. The Commission, however, was not satisfied merely with greater storage capacity. The company has maintained that, since the Oklahoma and Kansas fields are being depleted, it would

be unjust to require them to invest in the building of additional pipe lines. The Commission is now having experts investigate the entire field in relation to what gas fields the Company now owns and controls, the probable life of such gas fields, what gas wells could be purchased at a reasonable price by the Company, and a complete investigation as to the possibilities of the entire gas field and the needs of the distributing system.

The Telegraph Companies.—Since 1898 Kansas City has been in a controversy with the Western Union Telegraph Company. It has attempted to compel the Company to place its wires under ground, but has always been unsuccessful. The Commission took up this controversy. After negotiations of several months' duration, the company agreed to place all of its wires, in certain districts, under ground. An ordinance was passed requiring them so to do. The work is now completed.

Electric Lighting.—On entering office, the Commission found that, under the ordinances then in force, customers' meters were inspected by an officer whose salary was paid by the Company, whose assistant was a direct employee of the Company, and that the instruments used were instruments belonging to the Company, the City owning none of its own. Under the direction of the Commission, an ordinance was at once drafted, providing for a city electric meter inspector, giving him an assistant, and providing him with his own instruments.

The Commission made an investigation into the rates charged for electric light. It found that the Company was not operating under any franchise, that the City had never attempted to control its rates, that its rates varied from 3 cents per kilowatt hour to 10 cents per kilowatt hour, that the Company had a large number of classifications of its customers by which residents operating in

the same line of business upon the same street and using approximately the same amount of current were receiving different rates. After consultation with the officers of the Company, it was agreed that, until some ordinance was passed regulating rates, there should be no discrimination in rates, when the same amount of current is used under the same conditions. It will be necessary for the Commission, in the near future, to make an inventory of the Company's properties in order to fix and establish fair and reasonable rates for its services. This is one of the projects that the Commission has in mind for the near future.

An incident illustrative of the value of such a Commission to any City is the fact that, from the information and data collected by the Commission, it was possible to raise the valuation of the Company's personal property from $400,000 to $1,000,000. This will mean an increase of $7,500 in the taxes of the Company during the next fiscal year, or almost three-fourths the entire amount expended by the Commission during the previous year for all of its expenses.

Steam Railways.—Steam railway companies in Kansas City had been in the habit of so neglecting their crossings that many of them were almost impassable. Inspectors were sent out and detailed reports and photographs made of all steam railway crossings. Under the direction of the Commission, all of these crossings were immediately repaired.

Comparative Statistics.—The Commission has gathered comparative statistics from all the larger cities of the United States, showing comparative rates for electric light companies which furnish commercial lighting, power current, or residence lighting, showing investment in the plant, the source of power, the equip-

ment, price of coal, price of water, price of street lights, the manner of inspection, and whether they are operating as a monopoly or in competition. Similar investigations were made as to the various telephone companies throughout the United States. This information is systematically filed and indexed.

Franchises.—The Commission discovered that there never had been gathered any information as to what franchises of the City were still valid. It therefore had copies made of every franchise or grant that had been made to any corporation or individual to date. Now the City can, at a glance, determine what its rights are and what rights any utility company operating in Kansas City may claim.

The Commission, while interfering as little as possible with the internal affairs of the utility companies, has, at the same time, made every effort to require those companies to give the service they had contracted to give, and to compel them to do those things that they had promised to do. The Commission was also willing at all times to defend the companies from unjust taxes and burdens.

The Commission believed in the value of publicity. When it discovered that any company was failing to carry out its contractual obligations it did not hesitate to give out the facts and see to it that the newspapers gave full publicity. In a large number of the cases this publicity was all that was needed to effect a remedy.

The law and ordinances under which the Public Utilities Commission of Kansas City is operating is by no means ideal. The first objection is that it is the creature of an ordinance and could be abolished by the Common Council at any meeting. The Commission should be created by Charter, its members should not all be ap-

pointed at the same time, and for the same period that a majority of the Commission may, at all times, be experienced members. The present ordinance of Kansas City gives the power to the Mayor to appoint or remove any member of the Commission. It also gives him power to appoint the attorney for the Commission. It is doubtful whether the Commission should have an attorney whose sole duty it is to perform services for the Commission. It would be better, perhaps, if an additional Associate City Counselor were appointed and assigned to the Commission and, when not needed by the Commission, used in other work for the City. The present Counselor for the Commission has voluntarily devoted all of the time that was not necessary for the Commission to other work for the City, but it probably would be better to make it his duty so to do.

The Commission, under the present State law, has power only to investigate the matter of rates and no power to enforce those rates after it has determined what the rates should be. An act should be passed by the State Legislature granting to the Commission wider power so that the Commission would be independent of the City Council in the matter of its investigations, so that, after it had determined a reasonable rate, it could enforce that rate. It would not appear to be wise to abolish the present Commission and in lieu thereof to establish a State Commission, but it would be wise to establish a State Public Utilities Commission with broad power, such as the Commission of the State of New York. Such Commission could afford to have, at all times, a corps of experts who would be competent to investigate and determine the value of street railway plants, gas plants, electric light plants, telephone plants, and general public serving institutions. These experts

could be loaned to the various cities and the expense in that way divided throughout the whole State.

There is no question as to the valuable service that a local public utilities commission can perform. A Local Commission is necessary because the men who compose it are citizens of the City and daily come in contact with the citizen and receive complaints as to service and rates.[1]

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[1] The street car company of Kansas City was recently placed in the hands of a receiver; were it not for the fact that Kansas City had a Public Utilities Commission, the City would have been helpless in Court. With such a Commission Kansas City was enabled to file an intervening petition in the Federal Court setting out in detail all of its grievances against the Street Railway Company in the matter of paving, in the matter of track repairs and quality of service. These grievances the city could support from the records in the office of the Public Utilities Commission.

CHAPTER XIII

THE ST. LOUIS PUBLIC SERVICE COMMISSION

In accordance with the provisions of the Missouri statute of 1907, quoted in full in the preceding chapter, page 219, the City of St. Louis, on February 24, 1909, by ordinance provided for a municipal Public Service Commission. Roger N. Baldwin, secretary of the Civic League of St. Louis, describes as follows the powers and functions of that commission:

The ordinance, quoted in full in the appended footnote,[1] provided for a commission of three to be appointed by the Mayor and confirmed by the Council.

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[1] "ORDINANCE 24196."

"An ordinance to create a public service commission, to prescribe its powers and duties, and to make an appropriation to pay the expenses and outlays which may be thereby incurred."

Sec. 1. COMMISSION.—APPOINTMENT OF.—There is hereby created a commission to be known as "The Public Service Commission" which shall consist of three members appointed by the Mayor and confirmed by the Council.

Sec. 3. TERM OF OFFICE.—Each commissioner shall be appointed for a term of three years and until his successor is duly appointed and qualified, provided that the first appointment hereunder shall be for terms of one, two and three years, respectively. Any vacancy shall be filled by appointment only for the unexpired term.

Sec. 4. DUTIES OF.—The duties of said Public Service Commission shall be:

The Commission authorized by this ordinance was appointed by the Mayor in March, 1909. It consisted of Mr. Joseph L. Hornsby, Chairman, attorney and former President of the City Council; Mr. James E. Allison, Consulting Engineer, and Mr. James A. Waterworth of the St. Louis Insurance Surveys. The members

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First: To make investigations into all matters connected with all rights, privileges and franchises held or claimed by any and all persons, firms, or corporations owning or operating a telephone or telegraph line, system or exchange, or a street railway line, or system, or a tunnel, subway, conduit or viaduct, or engaged in furnishing gas, steam or electricity for lighting, heating or power, or engaged in furnishing water, heat or refrigeration, under franchise granted by the City of St. Louis or by the State of Missouri, effective or operative within the limits of the City of St. Louis, to collect, revise and publish all laws, ordinances and permits dealing with such rights, privileges and franchises and to report to the Municipal Assembly all material violations of any of the said rights, privileges or franchises, or of any Charter provision or State law relating to said rights, privileges or franchises, together with the recommendations of such laws or ordinances in this regard as shall in its opinion be advisable to protect the best interests of the City of St. Louis and the public.

Second: To make investigations into the methods of operation, the facilities offered, the quality of service rendered and such other matters connected with the operations of such persons, firms or corporations as concern the general welfare, and to recommend to the Municipal Assembly such changes and improvements in the operations and conduct of such persons, firms or corporations as will best promote the public interests, preserve the public health and safety and protect the general welfare of the City of St. Louis and the inhabitants thereof.

Third: To make investigations into all facts and matters tending to show the just and reasonable rate or rates charged for the services of all persons, firms or corporations mentioned in this ordinance in so far as it is within the power of the City of St. Louis to regulate such charges, and to report to the Municipal Assembly its findings, together with recommendations of what, in its opinion, constitutes

of the Commission were appointed by a Democratic Mayor, and two were, nominally at least, members of

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a reasonable rate or rates of charge for such services in the City of St. Louis.

Fourth: To investigate and report upon any and all matters connected with the said public utilities, upon request of either House of the Municipal Assembly, or of any committee thereof, or of any officer of the City of St. Louis acting in the course of his duties.

Sec. 5. SHALL MAKE RULES.—EMPLOY AND FIX COMPENSATION OF SECRETARY, ETC.—REGULATE EXPENDITURES.—The Commission may make all rules for its guidance and procedure within the limits of this ordinance and regulate the mode and manner of all investigations and hearings before it, provided all hearings and all records of the Commission shall be open to the public. The Commission may appoint a secretary, who shall hold office during its pleasure at such compensation as may be determined by the Commission, and may employ such attorneys, experts and other persons as in its judgment may be necessary to carry out the provisions of this ordinance and shall fix their compensation. The Commission shall be sole judge of the propriety of any expenditure within the limits of the appropriation made in section 10 of this ordinance, and the accounting and disbursing officers of the City of St. Louis shall honor warrants of the chairman and secretary of the Commission up to the amount of said appropriation. The commission shall have an office in the new City Hall, and shall be provided with a suitable room or rooms, necessary office furniture and supplies, which shall be paid for out of the sum appropriated for the expenses of the Commission.

Sec. 6. EMPOWERED TO ADMINISTER OATHS AND TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF PAPERS, ETC.—CITY MARSHAL TO SERVE PROCESSES.—Each commissioner is hereby authorized and empowered to administer oaths and affirmations in all matters incident or belonging to the exercise of the duties or powers of the Commission. Said Commission is hereby authorized and empowered to require, by subpoena, the attendance and testimony of witnesses, and the production of books, papers and documents, in any investigation conducted by said Commission, in respect to any matter or thing which said Commission is authorized to investi-

the Democratic Party. The terms of two members of the Commission expired during the administration of a Republican Mayor, but the incumbents were re-appointed

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gate, provided, that any person so required to testify or to produce any book, paper or document, as aforesaid, may excuse himself before the said Commission for failure to testify or to produce any book, paper or document, upon the same grounds and for the same reasons that would constitute a valid excuse in a court of record of this State. The subpœnas authorized as aforesaid shall be issued and signed by the Chairman of said Commission. Services of process: The City Marshal is hereby authorized and directed to serve any and all notices, subpœnas, attachments and other forms of process which may be issued by said Commission from time to time.

Sec. 7. COMMISSIONERS SHALL HAVE NO PECUNIARY INTEREST IN ANY CONCERN SUBJECT TO THE PROVISIONS OF THIS ORDINANCE.—Before entering upon the duties of his office, each commissioner shall in addition to the oath of office prescribed by the Charter, take oath that he is not pecuniarily interested directly or indirectly in any company, firm or corporation subject to the provisions of this ordinance, and no person shall be employed by said Commission or hold any office or position under said Commission who is pecuniarily interested, directly or indirectly, in any such company, firm or corporation.

Sec. 8. SHALL REPORT TO THE MUNICIPAL ASSEMBLY.—WHEN.—The Commission shall report to the Municipal Assembly once every six months and in addition thereto shall report at the close of the investigation of any one subject and at such time as either branch of the Assembly may ask for such reports.

Sec. 9. COMPENSATION OF COMMISSIONERS.—EXPENDITURES.—Each commissioner shall receive for his services the sum of Twenty-four Hundred Dollars per annum, and all actual and necessary traveling and other expenses incurred by him under the authority of the Commission in the discharge of official duties, shall be repaid to him. Said salary shall be paid in monthly installments.

Sec. 10. APPROPRIATION.—There is hereby appropriated and set apart out of the Municipal Revenue Fund of the City of St. Louis the sum of Twenty-five Thousand Dollars for the expenses and outlays which may be required for the objects and purposes of this ordinance."

without any question whatever. It is practically a non-partisan Commission. It was recognized from the first that the Commission consisted of men of high character and of the utmost integrity, men who have won the confidence and respect of public officers and the community at large.

The Commission maintains an office in the City Hall, and an office force under the direct supervision of the Chief Engineer, Mr. Allison, who is also a member of the Commission. The Commission employs fifteen to twenty employes, varying according to the work in hand. They consist of inspectors, draughtsmen, engineers, statisticians, and clerical help. The appropriation of $25,000 granted under the first ordinance has been increased to $30,000.

The work of the Commission has been to examine in detail the operation of each one of the public utilities in St. Louis. In addition to that, the Municipal Assembly has referred practically all general franchise matters to the Public Service Commission. The recommendations of the Commission have been followed in practically every instance. It was, however, only after a year and a half's work on the part of the Commission that its influence and power began to be acknowledged on all sides. There was considerable criticism and discussion the first year on account of the apparent delay on the part of the Commission in reporting on the vital problems in public service matters, for which the community had long been demanding a remedy. Mr. Allison, the Chief Engineer of the Commission, in speaking of the Commission's work during this period, says:[1]

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[1] The extracts here given are from several papers and addresses by Mr. Allison.

In the early part of our work the Commission was somewhat concerned at the apparent misunderstanding on the part of the newspapers as to the character of good public service work, and the time required to do it.

We believe that now, however, the newspaper men of the city have a pretty clear understanding of the time required to do this work well, and we think that we no longer have to fear hostile criticism from the press on this point.

As a matter of fact, taking into account the size of the property under investigation, the time consumed by the St. Louis Commission so far will compare favorably with similar work done by other commissions or by first-class engineering firms.

The appraisal by the St. Louis Commission of the property of the Union Electric Light & Power Company was begun about the first of July last year (1909) and finished about the first of February following, requiring about seven months' steady work for a force of some fourteen or fifteen engineers and their assistants, to arrive at what we call the tentative valuation figures.

Even before February, a part of the force was already at work on the property of the United Railways Company, and as fast as they were released from the work of the Union Electric Company's property they were transferred to that of the railways. . . .

I have had engineers say to me, "Why does the Commission go so much into detail in its valuation work? I could give an opinion as to the value of these plants in a month or two months, as the case may be." Any engineer who makes such a statement simply shows that he is absolutely ignorant of the requirements and conditions of public service valuations. It is true that an engineer might go into an electrical plant and note the number and capacity of the boilers, prime movers, and generators, and then, by taking into account the miles of wire, etc., as reported to him by the company, give an opinion as to the value or cost of the plant; but when he had finished, he could give nothing but

an opinion, and his estimate would be entirely valueless to withstand attack or criticism, and not worthy of being made part of a public record.

No responsible public service commission in the country will now accept such work as worthy of consideration. It is necessary that the valuation work of a public service commission shall show facts, not opinions, and shall show and record these facts in such manner that they cannot be disputed successfully. In short, the records must be made with the view of their being clear, convincing and complete to anyone who may care to investigate.

Before going into detail in the valuation work of the Commission, I wish to point out the importance of research and investigation of the legal rights of the corporations as defined by the ordinances of the city. Without knowledge of these legal rights, it is impossible to proceed intelligently with regulation work. So important does this commission consider having readily available a complete record of these laws and ordinances, that the first work undertaken by it was the collection, arrangement and publication of all the laws, ordinances and permits of St. Louis pertaining in any way to the rights of the companies now performing public service under franchises granted by the city. The work involved research through some 25,000 ordinances and their selection, arrangement, and indexing.

The Commission, during its second year, defined with some care its attitude toward the problems with which it deals, and this attitude has met with a singularly favorable response from all classes in the community—not only the business interests and men interested in public affairs, but from the radical and labor elements, who have regarded the Commission with a degree of confidence which they do not often accord public officials in their dealings with public service corporations.

In regard to its policies, the Chief Engineer of the

Commission contributes the following interesting discussion:

A public service commission should be a conservative body whose most important function is to prevent injustice toward the companies and to correct injustices against the consumers.

But if the members of commissions or other regulating bodies allow themselves to be influenced to accept exaggerated or unreasonable statements of values, or if they hesitate to fearlessly point out and correct discrimination or extortion against the consumers, not only are they derelict in their duty as public officials, but they are, in the end, working against conservative property interests and are acting as the allies of the demagogue and the social disturber.

A business or professional man who has not the courage to face the possible vindictiveness of those whose interests or plans may be affected by impartial official action has no rightful place on a public service commission.

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Up to very recent times, the investor and the exploiter have been the only two of the three parties who have had much to do with the situation. Generally the exploiter obtains his franchise or makes his consolidations, builds his plant or railroad, manufactures his securities and begins to sell them to the investor, if he can, and in nearly every case the fact that there is a third party in interest, namely, the public, seems to have been entirely forgotten. Now, while these rights of the public may have been forgotten or ignored, it by no means follows that they have been destroyed, and it becomes the plain duty of regulating officials to see that they are given due weight in the solution of the problems presented.

The foundation of all rate regulation, so far as the question has been passed upon by the courts, seems to be that a public utility, when it accepts a franchise or other special privilege, enters into an obligation expressed or implied, that

it will furnish adequate service and will charge therefor no more than will bring a reasonable return on the value of the investment in the service of the public.

The application of this principle to the investor who has paid good money for the water in his securities seems a hardship. It is a hardship, and one which the Commission should make as light as is consistent with its duty; but a hardship is not necessarily an injustice, and if an investor has bought watered stock in a public utility with the idea that it entitles him to all the traffic will bear, without regard to the rights of the consumer, he is doomed to speedy disappointment whenever his particular corporation comes under efficient and conscientious regulation.

The buyer of watered stock in a public utility is very much in the position of the purchaser of land which has a flaw in its title. He is to be pitied and perhaps let down as easily as possible, but the rights of the case must be adjusted, nevertheless.

The statement that a utility may earn a reasonable return on the value of the investment in the service of the public seems simple enough, but really it may have many and complicated meanings, for the word "reasonable" is subject to many definitions, and the true meaning of the word "value" is the despair of all our ablest writers and teachers of economics. If you should get commissions subservient enough or unreasoning enough to accept without question exaggerated theories and unreasonable figures, the day of public ownership and the condemnation of properties is not far off, for that will be the only means of self-defense left to the public.

If the scientific regulation of public utilities can be carried out to a successful conclusion, we shall have a system of regulated and protected monopolies in which the investment will be perfectly safe and the return and charges correspondingly low, but in order to do this the public must be taught that for every added risk the natural laws of commerce will inevitably add to the price of the service or detract from its quality.

The first company examined in detail by the Commission was the Union Electric Light & Power Company. In March, 1911, the Commission published an exhaustive report going into all matters necessary for calculating fair rates of electric light and power. The report combined a history of the many companies preceding the Union Electric Light & Power Company, in order to determine their fiscal relations to it. It also contained the report of the Chief Engineer on the underlying principles in rate-making. The Commission, in this report, quoted more fully below,[1] decided upon a maximum rate of nine

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[1] *The Commission's* Conclusions and Recommendations.

Maximum rate, nine and one-half cents per kilowatt hour. (Present rate 12 cents).

Minimum bill, for consumers paying minimum rate, fifty cents per month. (Present minimum $1.00).

Minimum bill for all other consumers, one dollar per month.

Guarantees abolished except in cases necessitating special investment.

Depreciation charge, five per cent. per annum.

Net return above depreciation charge on property in the service of general consumers, eight per cent. per annum.

Earning value of property in service of general consumers	$13,441,360
Earning value of property in service of United Railways Co	2,693,033
Total earning value	$16,134,393

Within a few days of the printing of this report, the Company has submitted a statement of additions to property, from the date of the Commission's inventory, to January 1st, 1911.

Making the additions according to this statement to figure before depreciation in Table XXVIII, the result is:

Total value as of January 1, 1911, (Undepreciated for condition)	$17,857,078.

and a half cents per kilowatt hour (the existing rate was twelve cents), valuing the company's property at $17,857,078.

The Company, although it had had every opportunity for being heard and submitting its report of experts on its valuation, immediately raised a protest when the Commission's report was made public. It issued a long statement, claiming that it had not had a fair chance to be heard; that its own valuation of $30,000,000 was based on the work of experts and it should be allowed to base its earnings on that valuation. The company, however, admitted that the difference in estimated cost of construction between the report of its engineers and that of the Commission was only 5½ per cent. The Commission issued a lengthy and carefully prepared reply in which it was clearly shown that the Company had been given every opportunity to be heard, and that the difference in valuation was due to a fundamental difference in assigning what are generally called intangible values.

With this report as a basis, the Commission introduced an ordinance into the Municipal Assembly which, after much discussion, passed both houses and was signed by the Mayor. Taking advantage of the provisions of the statute allowing an appeal to the courts, the Company filed, within the required time, its protest, which is still pending before the courts.

In regard to the Commission's report as to rates and valuation, the Commission's Chief Engineer says:

> The valuation of so extensive a property as that of the Union Electric Light and Power Company, by detailed inventory and appraisal, was a work of some magnitude, requiring considerable time and labor, but as a result the city

has obtained a complete record of the location and value of the property as it now exists, and any future valuation can be made by adjustment from the current property accounts of the company, together with the proper inspection of the items of increase or decrease.

In applying the term "tentative figures" to the first results of these appraisals, I might explain that we regard all figures as tentative until the companies have had a full and complete opportunity to go over them in detail, and to point out such errors as they may find, and to present such comments and claims so they may see fit. Any other method of procedure would be eminently unfair, and would be almost like trying a man without giving him or his counsel the right of a hearing.

After we had arrived at a tentative valuation in the Union Electric Light and Power Company's case, the company asked for and were given the opportunity of going over our work in complete detail. Some little time at first was consumed by the company in deciding exactly how they would go at the work, but finally they engaged the services of a well-known engineering firm of New York to handle the case for them.

The result of the checking of the company's engineers showed a difference of only 5½ per cent. in the two estimates of construction costs.

In speaking here of the approximation of the figures of the company's engineers and the engineers of the commission, I am speaking only of the figures representing the value of the present existing *physical* property of the company.

These values all deal with absolute physical facts, and it is to be expected that a close agreement would be possible between fair-minded men.

But as to the so-called intangible values, that is another question.

It is under the head of "intangible values," however, that some of the most interesting problems of public service work present themselves. Take, for instance, the valuation of

franchises. In some instances, the courts have allowed franchise values, especially in cases where the valuation was being made for purchase or condemnation purposes, but in rate-making cases the best practice by commissions has been to hold that the franchise, having been given free by the public, should not be valued against the public in making up the rate.

The difference between the company's total claim for land value and the commission's allowance is $2,649,220.

Another point of theoretical difference between the claims of the company and the allowance of the commission, was in an item called "General Contractor's Profit." Under this head the company claimed that, as in theory they were reconstructing their plant new, they should be allowed to add to the value 10 per cent. of the construction cost, as a profit to an imaginary party who would undertake the entire work of reproducing the plant. As there was in fact no general contractor concerned in the actual building of the present plant, and seldom is in creating such plants, the commission considered this item as entirely imaginary and theoretical, and did not allow it. The item amounted to $1,328,000.

Another point where the theory of the company made a large difference between the claim and the allowance, was in the item of interest during the period of construction. This item is meant to account for the interest on money used in construction, while it is lying idle, before the property for which it is paid comes into operation, and it is a just and necessary element of cost; but under the company's assumed hypothetical case the period of idleness was much longer in the aggregate than the records and estimates of the actual building of the plant showed to have been the case.

The company's claim for interest during construction, based upon theory and a hypothetical case, amounted to $2,490,000, while the commission's allowance, based upon the facts, as evidenced from the records of the company, amounted to $725,000, a difference of $1,765,000.

The company also claims $2,400,000 as cost of financing,

and $4,400,000 as cost of establishing the business. This cost of establishing the business is a legitimate element of value, and the commission made an allowance of $1,000,000 to cover it, but could not agree with the company's claim of $4,400,000.

As to the claim for cost of financing, it is sufficient to say that the commission could not accept what it believes to be an exaggerated estimate of such costs.

These five items of difference between the claims and the allowances in this case represent mainly fundamental difference in theory, and amount to 82 per cent. of the entire disagreement between the two valuations.

The total claims of the company sum up to over thirty million dollars, and it is assumed in building up this sum that the public must give the franchises, pay for getting the money, guarantee all the losses and pay the company a 10-per-cent. profit as a contractor for building its own plant.

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After the commission has made the valuation of the physical property, has allowed the proper amount for intangible values, has fixed, as nearly as possible, the correct amount of the depreciation, and has arrived at the gross income which the company should earn, it then becomes its duty to determine the rates which will produce this gross income, and to divide the burden of the rates as justly as possible between the different classes of consumers.

The rate question for electricity is one which has been puzzling the managers of companies and the members of commissions since the beginning of the companies and the beginning of the commissions. It is still puzzling them and will probably continue to do so for a long time to come.

At first sight, it appears that the ideal rate must be one under which each individual shall pay in direct proportion to the cost to serve him.

In attempting to devise a rate which will cause each individual consumer to pay in direct proportion to the cost of

rendering him his required service, the entire cost is generally divided into three elements:

First: The Per Customer Charge, which is the element of cost caused by the mere connection of the consumer, irrespective of his use of current. Costs assignable to this element being such as the cost of reading the meter, making the bills, keeping the accounts, etc., etc.

Second: The Manufacturing Charge, or the cost of manufacturing and delivering the current, irrespective of the investment.

Third: The Investment Charge, consisting of the return on the investment, the taxes and insurance, the depreciation and perhaps other minor charges.

The just apportionment of charges between the consumers, under the first two elements, is largely a matter of correct accounting; but when we come to consider the third element, i. e., the investment charge, we are confronted with the problem of determining the share of the investment caused or used by each individual consumer and his consequent proportional responsibility for the amount of income necessary to pay the investment charges.

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If it can be shown conclusively that it costs less to serve a large consumer, a discount or lower rate is justifiable under the "cost to serve" principle, but it is justifiable only so far as it is cheaper to serve him, or the low rate may be justifiable under the "expediency" principle,[1] but there can be no justification of a wholesale discount, except under these two principles, for under public regulation, where income is approximately a fixed amount, no consumer can escape a part of his proportion of charges without shifting the burden to another.

The admission of the "expediency" principle into rate

[1] The departure from "cost to serve" rates necessary to maintain the output at the point where the lowest cost can be obtained for the consumers as a whole.

regulation, while in some cases necessary, and for the benefit of the consumer will, if followed too far, result in the absolute destruction of any plan or mode of calculation based upon equity between the consumers; and the very difficult problem presents itself to the commission of determining how far it is wise to depart from the sound and just principle of "cost to serve," for the sake of a possibly lower rate resulting from the increased volume of business. . . .

The Commission at the end of its second year has practically completed its investigation of the United Railways Company, the only electric traction company in the city, and is also doing work preparatory to taking up the several other public utilities in the city.

Not a small portion of the work of the Commission has been the special franchise matters referred to it by the Municipal Assembly. In one instance the Commission prepared an admirable franchise for a short street railroad extension, setting forth definitely the principle of indeterminate franchises, which the Commission so strongly favors.

The Commission's actual power over franchises can best be seen by the fate of several proposed franchises which have been before the Municipal Assembly.

During the last Assembly, which ended in April, 1911, a compromise bill was drawn up by joint committees of the House and Council, acting in conference with the United Railways Company, to settle the long standing differences between the company and the city revolving chiefly around the payment to the city of the mill-per-passenger-tax, in force since 1903, but no portion of which was ever paid to the city, although the right of the city to levy such a tax has been affirmed by the United States Supreme Court. The Company offered to compromise with the payment of about half the tax and

accrued interest; to issue universal transfers, and to meet other obligations which they had long neglected. The representatives of the city were ready to extend the franchises of the United Railways Company and the subsidiary corporations which make it up, from 1917, when they expire, to 1948. This the Company was very anxious to have done, because of the great difficulty it has experienced in maintaining a sound financial condition in view of what is generally considered to be an excessive overcapitalization. The question was debated in the public press and in the Assembly, and feeling grew very strong. The newspapers demanded that the bill be referred to the Public Service Commission for a report, and sentiment in the Assembly finally came to the same conclusion. The bill was referred to the Commission, and it promptly issued a lengthy and clear report, condemning the extension of definite franchises for any such period of years. The result was that the bill was promptly killed.

During the same Assembly there was introduced a bill giving to a corporation known as the "Southern Traction Company" a fifty-year franchise for the use of the new Municipal Free Bridge, in the course of construction over the Mississippi River. This bridge is being built by the City of St. Louis in order to furnish an absolutely free highway from the Illinois to the Missouri shore, the present bridges being entirely controlled by the Terminal Railroad Association, which charges tolls. The proposition embodied in the bill was to grant the Southern Traction Company a franchise for the use of certain streets in the city, and to permit it to use the bridge to operate its cars, the use of the bridge, however, not to be in any sense exclusive, the cars of other companies being permitted to use the tracks on which the

cars of the Southern Traction Company should operate.

The bill was lengthy, amended a number of times, and protected the city's interests better, perhaps, than they have been in any similar ordinance ever enacted by St. Louis. The fifty-year-franchise provision, however, met strenuous opposition on the part of certain members of the Assembly, and on the part of the members of many semi-public organizations. The desire for an absolutely free bridge did not seem to be consistent with a fifty-year-grant to a company which was not yet operating, and for the use of a bridge several years removed from completion. The difficulty was further increased by the fact that the former Chairman of the Republican City Committee, on whose ticket most of the members of the Assembly were elected, engineered the bill through the Assembly. Frequent demands were made for the reference of this bill to the Public Service Commission, but it was successfully passed and signed by the Mayor without being submitted to it.

That franchise has been in the public mind ever since and contributed doubtless very greatly to the defeat of an issue of bonds in November, 1911, for the completion of the Municipal Free Bridge. The argument was used that it would not be an absolutely free bridge if encumbered, among other things, by a fifty-year-franchise, however well that franchise protected the city's interests.

The new Assembly, which was elected in April, 1911, immediately requested, however, a report of the Public Service Commission in regard to the Southern Traction franchise. The Commission published, in August, 1911, a comprehensive report advising its amendment, not its repeal, substituting for the fifty-year provision an indeterminate franchise for the use of the streets; providing

also that all special rights to the use of the bridge be revoked and the use of the bridge be given to this company and to all other companies alike under the provisions of a general bridge ordinance making the bridge an open highway to all roads desiring to use it. The press and various public organizations have given these recommendations of the Commission warm support.

These instances indicate that the situation concerning public utilities in St. Louis is greatly improved over that of even a year or two years ago. The public's confidence in the Commission as a regulating body is daily becoming stronger, and, although the Commission is only advisory, its moral power has become very great.

PART IV

REGULATION THROUGH STATE PUBLIC UTILITY COMMISSIONS

CHAPTER XIV

STATE VERSUS MUNICIPAL UTILITY COMMISSIONS

THE state public utility commission has been an evolution from the state railroad commission. In time it became evident that there were other utilities that were in as great need of regulation as transportation concerns. The field and power of railroad commissions were therefore greatly expanded; first, by giving them real regulative power, not advisory and publicity powers only, and, second, by gradually adding to their supervision other utilities. In most of the states public utility commissions are simply enlarged railroad commissions. Indeed, the Wisconsin, and other utility commissions, still bear the title of "railroad commission."

The history of distinct public utility commissions begins with the creation, in 1885, of the Massachusetts Gas & Electric Light Commission, discussed in a succeeding chapter. Following this, telegraph and telephone companies were placed under the supervision of railroad commissions. State supervision of municipal utilities really dates, however, from the creation of the Wisconsin and New York commissions in 1907. Since their creation, the movement toward state supervision of municipal utilities by means of state commissions has spread rapidly. In 1908 Vermont adopted a public utility law, transforming the "Board of Railroad Commissioners"

into a "Public Service Commission," giving the new commission supervisory powers, however, only over gas plants, electric light plants, telephone lines, and express companies. In 1910, New Jersey adopted a flabby sort of a public utility commission, and in 1911 transformed it into a full-fledged regulative commission under the model of the New York and Wisconsin laws. In 1911 seven states adopted virile public utility laws. These were New Hampshire, Kansas, Oregon, Ohio, Washington, Connecticut, and California.

Before going on to discuss the need for a state commission and the relative merits of state and municipal commissions, it would be well to state the characteristic and striking provisions of each of these later laws. The Massachusetts, Wisconsin, and New York laws are fully described in succeeding chapters.

In New Jersey, the jurisdiction of the Board of Public Utilities extends to all public utilities, including sewer concerns and oil companies, and to all common carriers, including canals, pipe lines, and subways. The Board may proceed on complaint or on its own initiative to investigate and fix rates or standards of service. It has power also to require joint rates and service, to require extensions of facilities or service, uniform accounts, detailed reports and depreciation funds, and to determine the reasonableness of proposed changes. The Board's approval is essential to all stock and bond issues, mortgages, or discontinuance of service. No franchise is valid until approved by the Board. The Board's orders may be set aside by the Supreme Court on the grounds of want of jurisdiction or of unreasonableness.

The New Hampshire law applies to all common carriers, telegraphs, telephones, and ferries, and to heat, light, water, and power companies. These must furnish

"such service and facilities as shall be reasonable, safe, and adequate." The Commissioners, three in number, may investigate on their own initiative or on complaint, and they may make such orders as to service and price as they may deem just, essential, or reasonable. To be valid, franchises must have the approval of the commission. No franchise can be transferred, assigned, or leased without the commission's permission.

The Railroad Commission of Oregon is given power to regulate telephones, telegraphs, wireless telegraphs, street railways, and heat, light, water, and power companies. Municipally-owned utilities are unfortunately excepted. The Commissioners may be removed after a hearing by the board that appoints them—the Governor, Secretary of State, and State Treasurer—on grounds of inefficiency, neglect of duty, or malfeasance in office.

The Ohio Railroad Commission is transformed in name and power into the Public Service Commission of Ohio, with power "to supervise and regulate public utilities and railroads." It may establish uniform accounts and depreciation funds, and is required to fix standards and units of measurements. Franchises may not be capitalized for more than the amount paid for them. Coöperation and consolidation are allowed with the consent of the commission, and telephone companies can be compelled to make connections and fix joint rates. Rates made by cities are subject to appeal to the commission by the utility whose rates are affected, or by one per cent. of the city's electors. The Commission's rate is final.

The Connecticut law, signed July 11, 1911, has one unique feature in that the public utility commissioners are subject to a conditional recall. On petition of 100 voters the attorney-general of the state must take steps to determine whether the commission, or any member of

it, is incompetent, or guilty of misconduct. If either is proved, removal results.

The constitutional amendment in California, adopted by popular vote October 10, 1911, provides for an appointive railroad commission of five, with powers over all public utilities. Any municipality in California may create or retain its own utility commission.

It has been pointed out in the preceding chapter on the need for public service commissions, that such administrative tribunals are positively essential to the intelligent regulation of municipal utilities. The provisions and problems of three typcal municipal commissions have been discussed in the three preceding chapters. It now remains to inquire whether municipal commissions for each of the largest cities of the state will suffice, or whether, under ordinary circumstances, there is necessity for a state utility commission as well. For the following reasons the author is convinced that a state commission is essential, whether or not separate municipal commissions exist.

In the first place, only a state commission can secure all the data essential to intelligent regulation. Relatively small cities will not go to the expense of securing even partial information, and hence their only reliance must be upon state commissions. But even the larger cities cannot afford to duplicate the costly, elaborate equipment necessary for securing all the data essential to sane and adequate regulation. In addition to its own equipment, the Wisconsin commission was glad to use the extensive laboratory facilities of the University of Wisconsin. The cost of instrumental equipment alone is quite heavy, and, once purchased, will be adequate for both the state and the city. Duplication of laboratory equipment is avoided through the creation of a single state commission.

Only a state commission can secure the required data because of the extensive intercorporate relations of municipal utilities. Interurban street railways now traverse considerable portions of almost every state in the Union. Municipal water concerns have alliances of all kinds with other industrial concerns in the state. So also do electric, gas, and sewer companies. For example, the Denver Street Railway Company has direct corporate and industrial relations with (1) the interurban service; (2) the railroads of the state; (3) the coal beds of Routt County and other sources of the state's fuel supply; (4) the large water and power concerns. Denver's lighting company is inter-related with the state's water, power, and electric companies. The Denver Union Water Company is associated with the state's irrigation concerns, and interested in the state's laws and regulations as to water rights and irrigation. The telephone company that has a monopoly in Denver, has a monopoly over the entire state. Such is typical of the intercorporate relations of utility concerns everywhere. It is clear that a municipality with only limited and enumerated powers could never endow a commission with adequate power to probe into all the data essential to wise regulation of even the city's own affairs. The problem is a state-wide one, and hence can be adequately coped with by the state only. It would be just as reasonable to expect any one state in the Union to secure all the data essential to regulate intelligently all the affairs entrusted to the existing Interstate Commerce Commission as to expect a City Utility Commission to secure all the data required to regulate the utilities that operate within a city's limits. The same reasons of uniformity, equality, efficiency, and impartiality demand a state commission for the regulation of municipal utilities, that demand a national commission

for the regulation of interstate commerce. Moreover, there are numerous problems, such as the regulation of the right-of-way between cities and counties, regulation of the transmission of electrical energy, water-power, and regulation of irrigation, that can be coped with only by a state board.

Again, a state commission is necessary in order to secure the comparative data necessary for intelligent regulation in any city. To be of value this data must be uniform. There must be uniformity as to the methods of determining capitalization, uniformity as to depreciation funds, uniformity as to issues of stocks and bonds. The marked defect of the Massachusetts scheme, as described in the succeeding chapter, is the conspicuous want of uniformity between the three state commissions. The defect would be all the more glaring if there were in effect several distinct city commissions. Only where there is uniformity of accounts and accounting terminology will comparative data be of any value. This is so important that the following chapter by Edwin H. Gruhl, Esq., chief statistician of the Wisconsin commission, has been set aside especially for its consideration. Through a state commission only can the needed uniformity be secured.

A state commission is also necessary in order to protect interurban and intercounty services. It should not be in the power of local governing bodies to inflict great injury on other cities or other parts of a city either by adverse legislation or by hostility in administration. One city should no more have the power to thwart public service in another city than one state should have the power to thwart the commerce of another state by adverse regulation of interstate commerce. The use of county roads and county bridges by utilities, especially street railways

doing an extensive state-wide business, must be subject to state-wide supervision. Crossings of interurban electric railways will be ever more and more in need of supervision as such crossings increase. The public service of our cities will more and more be furnished by monopolies of state-wide operation for the same reasons that our commerce is now carried on by single nation-wide railway monopolies—such monopolies are more economical and efficient. The telephone service is already monopolized. Electrical light and power is rapidly becoming so. The same is true of gas. There are also other problems inherent in the water supply that require state supervision. Philadelphia citizens should not forever be compelled to drink the sewage of the numerous cities that line the rivers above her. There is a necessity for state-wide protection because the services are state-wide. This state-wide protection a State Commission only, with state-wide jurisdiction, can adequately secure.

A state commission is necessary in order to give adequate protection to the investor in utility concerns. Bank Commissioner J. N. Dolley of Kansas, after careful investigation, decided that Kansas investors had lost a total of from four to six millions of dollars in the worthless stocks and bonds, the "Blue Sky," of mining, wireless telegraph, oil, rubber, land, building, investment, utility and other concerns. He concluded that the state should protect its investors by giving them reliable information as to any and all concerns in which they contemplated investment. He accordingly drafted a law, familiarly known as the Kansas "Blue Sky" law, which he succeeded in getting the Legislature of 1911 to pass. This law compels all individuals, firms or corporations to file with the banking department a detailed financial statement of their company, copies of their constitution

and by-laws, and such other information as the Bank Commissioner may desire, and to secure a permit before they can sell any stocks, bonds or other securities. The Bank Commissioner has full powers of inspection. The result of this law Mr. Dolley describes as follows:[1]

The law has now been in operation some six months, and Kansas is becoming fairly free from these fakirs and "blue sky" merchants. Immediately upon the taking effect of the law they began to leave for all parts of the country.

The law has become so thoroughly advertised in Kansas that when an agent approaches an investor the first thing the investor wants to see is his permit from the Banking Department. It has not been necessary to make many prosecutions under the law, although some have been made, for the reason that a company that is not all right will not try to comply with the law, or try to do business without complying, but will leave the state for territory which is more favorable.

The law is considered by all who know its workings as one of the best laws ever placed upon our Statute Books, as it not only keeps the fakir from stealing the money, but keeps it in Kansas, where it can be used for Kansas institutions and Kansas enterprises, and where every citizen of Kansas should be interested in keeping it. The law is right in principle, and all good and legitimate companies are in favor of it. The average investor does not know how to judge an investment, and is just as apt to accept a bad investment as a good one. Because of this fact there is an enormous amount of bad stock on the market, and one who has not investigated the matter has no idea of the kind, class and number of people, not only the poorer and medium class of people, but some of our most responsible people as well, who are wasting their money on this class of investments.

Why should not a state have a bureau or some place that

[1] In a special communication to the author, November, 1911.

all of these companies must report to and be investigated by, so that any investor may have the advice of an expert when he wishes to make an investment?

It is just this kind of a bureau that each utility commission should be for all who may wish to invest in utility concerns. All the reasons that could be given for justifying the Kansas "Blue Sky" law justify special protection to investors in public utility concerns. Public utility investors are entitled to special protection, indeed, because their concerns are, or soon will be, subjected to rigid regulation. The interests of the public demand that investments in concerns whose special duty it is to furnish and distribute public necessities should be subjected to careful public protection. The results of such protection, even when heavy construction accounts have been acquired, are amply illustrated by the report of the Wisconsin Commission, which shows that, during the year 1910, "the operating revenues of electric utilities increased 20 per cent., their net income 29 per cent., and new construction for the year 145 per cent. The operating revenues of water utilities meanwhile increased 7 per cent., their income 13 per cent., and the new construction 24 per cent. Gas utilities increased their operating revenues 3 per cent., their net income 15 per cent., the new construction 24 per cent. Telephone utilities increased their operating revenue 11 per cent., their net income 9 per cent., and construction for the year, 14 per cent. Railway and traction lines on the average increased their operating revenues 13 per cent., their net income 8 per cent., and construction an equal amount. All utilities in Wisconsin are in a more flourishing condition now than ever before and are planning to extend their operating expenses far into the future."

With such protection to investors, capital for utility investments will never be wanting.

It is worthy of note in passing that a small fee for the issuance of corporate securities will alone pay for a State Commission. The cost of the Wisconsin Commission, including the expense of earnings, of furnishing transcripts of proceedings free of charge to all interested parties, of appraisals, of public service and accounting inspections, is about $100,000 a year. Hereafter, the revenue derived from the prescribed rate of $1 for each $1,000 of the face value of corporate securities thus issued will, in all probability, be sufficient to defray the entire annual cost of the commission.

And finally a state commission is needed in order that municipal commissions may be effective regulative agents. Our courts have held that while the state legislature has plenary power to legislate as to rates, services, and extensions of utilities, and may delegate that power to the city, yet the city does not have the power unless it has been enumerated to it by the state in express terms, or by necessary implication. Just because the state's powers are larger, a state commission will often be advantageous in assisting a city to cope with its public utility problems. Moreover, municipal regulation must be " reasonable," say our courts. It will be more difficult in many cases to justify a rate as reasonable when it applies to one municipality only, than when it applies to the whole state. A common state-wide rate may bring a reasonable return, and hence will be upheld by the courts when it would not bring in a reasonable return if adopted for a single city or group of cities. Without state aid, any given city, moreover, would find it difficult to secure accurate information for the just assessment of its public service concerns, especially if they

do interurban or intercounty business. The city will find the assistance of a state commission to be indispensable.

These considerations point to the necessity of the existence of a state commission with full powers. But the existence of a state commission will not, even under ordinary circumstances, especially in states with large urban populations, dispense with the need for municipal commissions. Quite to the contrary, municipal commissions will still be essential in the very large city.

A local commission should exist in such cities in order to secure data for the proper solution of local problems. City councils will ever be in need of much information that only a local public service commission can secure. This is amply illustrated in the chapter on the St. Louis Public Service Commission. Moreover, there will ever be local utility problems in large cities that can be competently administered only by expert local commissions. The local commission will also be of value in representing the city's interests before the state legislature when utility legislation is before that body. Our cities should have all the autonomy consistent with efficient state control.

A division of powers between state and municipal commissions, which secures all the advantages of state supervision, and leaves to the city ample autonomy and power to deal with local problems, is found in the New York law. The work and results of the New York State Commissions, described in a succeeding chapter, amply justify the wisdom of such legislation.

If a choice must be made, however, between state and municipal commissions, the state commission must be chosen. The state commission in existence, local municipal commissions may then be advantageously created for the largest cities.

CHAPTER XV

UNIFORM ACCOUNTING: ITS NEEDS AND RESULTS

THE consideration of present-day problems affecting uniform accounting for municipal utilities is necessarily preceded by a definite understanding of the uses to which such uniformly compiled information will ultimately be put. Required results will, in a measure, determine methods, and the importance of results will determine the extent to which such methods can be economically carried. The needs and results of required uniform accounting are thus described by Edwin H. Gruhl, Statistician for the Railroad Commission of Wisconsin.

The anticipated purposes of publicity of accounts are threefold. To begin with, if earnings are properly credited and expenses properly charged, the knowledge of net cost of conducting the utility company can be obtained and form the basis of forecasting future operating income. To a municipally-owned plant operated upon a definite budget allowance, this information is indispensable, determining where an allowance has exceeded or fallen short of the amount set aside to conduct the utility department and the necessity pointed out of retrenchment and saving. To the privately owned plant, such a published cost statement is frequently necessary to preserve credit and to quiet an unwarranted demand for extended service or lower rates. To the in-

vestor, compelled to glean obscure facts from the published reports to stockholders or summary statements in financial handbooks, such publicity furnishes a reliable basis for estimating earning power. To a regulative body entrusted with general powers to secure adequate service, reasonable rates and to supervise the issuance of stock and bonds, the published statement discloses what is frequently the most important question of fact, the margin of anticipated net profits. Publicity is necessary to effective regulation whether such regulation is attempted by a state commission, a local body, or by specific franchise provisions.

In the second place, if financial statements are published at stated intervals and if the revenue and expenditure items summarized in such a statement have been carefully classified in accordance with a uniform scheme of accounts, attention will be directed to the possibility of better economy by enabling comparison of one establishment with its neighbor, and cost of one year or one administration with its predecessor. The well-planned uniform accounting system will bring to light those contrasts in operating conditions frequently noted, for example, in private as compared with publicly-owned plants, and, if cost data for years of operation and for a multitude of similar plants is available, something more than the plea that operating conditions are probably different must excuse the discrepancy.

Finally, statistical information of this character will furnish an admirable index of the economic development of the separate communities. Those who have studied the prosperity cycles of the separate utility plants as reflected in their net earnings have been struck by the similarity of the trend of such earnings and the movement of population, post office receipts, bank clearances,

manufacturing returns, and other indices of the growth and development of the community served. It is of interest, moreover, to measure the net effects of regulation, and to know whether such regulation is resulting in the legitimate development of the public utility enterprise.

To supply these needs a classification of accounts must be prepared which will not only conform with the fundamental principles of good accounting, but which will, in addition, be sufficiently flexible to provide for every variety of local operating condition. The progress which has been made thus far along these lines has been brought about partly by the efforts of large holding corporations to secure systematic accounts for a variety of utility plants operated under their control, partly by the efforts of national technical organizations such as the Street and Interurban Railway Accountants' Association, the National Electric Light Association, the New England Water Works Association, the American Water Works Association and other societies to standardize accounting practice and, finally, by the action of public service commissions, empowered by statute to provide for uniform publicity of accounts. Such provisions are included in the Massachusetts Gas and Electric Commission Act of 1885, and the New York and Wisconsin Public Utility Acts of 1907. They are included, moreover, in the large number of statutes providing for public utility control passed in other states during the last year. It is usually conceded that the ideal uniform standards of accounts must be national rather than local in scope. Utility managers have recognized this fact, and in line with such a movement many utility companies throughout the country have voluntarily adopted classifications such as those prescribed by the state commission. While the idea of uniformity in accounting procedure for utility

plants is not new, definite action is of comparatively recent date. A record of results must therefore be in the nature of a progress report.

Conformity of the uniform yearly statement with good accounting practice has been much simplified because of the standardized character of summary double-entry bookkeeping forms. Such forms are usually three in number and consist first of the *Balance Sheet,* or statement of financial condition or credit of the utility as of a given date, containing, upon the one hand, the fixed assets of the undertaking, such as property and plant, and the floating assets, such as investments and current resources of cash, accounts receivable, materials on hand and other evidences of credit; and the capital liabilities such as stocks and bonds, and the floating liabilities such as notes, bills and accounts payable, and recognized deferred liabilities for estimated losses due to depreciation, amortization and contingencies. The excess of assets over liabilities represents, if such a statement is properly drawn, undivided surplus or the interest, claim, or right of the proprietors to such surplus. The second and third forms are frequently combined as an *income account* and consist of an *operating statement,* containing the revenue and operating expenses during a certain period, and a *profit and loss* statement designed to disclose the action taken by the proprietors in the disposal of profits. This three-form statement is usually the basis of all publicity accounts. It is found in the English Water Works Clauses Consolidation Act of 1847, the Electric Lighting Act of 1882 and 1899, and the Gas Works Clauses Act of 1871. It forms, moreover, the basis of the Interstate Commerce classification of 1889 and the classifications of the separate public utility commissions of Massachusetts, New York, and Wisconsin.

The questions of definition and proper subdivision of both balance sheet and income account have necessarily led to differences of opinion among accountants, managers, public service commissions and others interested in the work of preparing a uniform classification. Differences as to terminology have frequently resolved themselves into a mere choice of what, to all intents and purposes, are synonymous terms, and will not seriously interfere with the reconciliation of the requirements of the various commissions. Differences as to grouping of accounts have been of a more serious nature and have frequently raised the question as to the purposes for which such subdivision is intended. It is apparent that the points at variance will not be entirely adjusted until the various accounting schemes have been thoroughly tested under practical operating conditions.

As regards the balance sheet accounts, the provisions of various public utility commissions have been, in general outline, uniform. Some departure has been made from what had heretofore been general practice. For instance, definite provision is made in the balance sheet for depreciation of fixed assets. It seems to be accepted practice, however, in all the classifications to keep the plant value at its original cost and to set up a depreciation reserve liability sufficient to offset the waste of assets due to wear and tear, supersession, etc. Recognition, moreover, is only given in the standard balance sheets to such items of intangibles for which actual outlays have been occasioned. The expense of discount on bonds is carried as a portion of the property cost in the Wisconsin Commission classification and as an item of "Unamortized Debt Discount Expense" in the New York Commission classification.

As regards the income account, it is generally recog-

nized that operating revenue must be stated in gross and must not be reduced by overcharges, rebates, commissions, and similar deductions. Provision is generally made, moreover, for postponed operating costs occasioned by deferred renewals, depreciation and contingencies; and reserve fund accounts are created to offset these estimated losses. The standard classifications generally are silent as to the basis of determining how large such reserves shall be, these matters being usually left to the estimate of the separate utility companies.

The subdivision of expenses of operation constitute the main point of difference in the various standard uniform classifications of accounts for utility plants. Necessarily what is a proper grouping will depend upon the uses to which the classification is finally put. For some purposes of analysis a separation of labor items from supplies and expense items is sufficient. For other purposes the nature of the account itself is of particular interest. Thus maintenance expenditures are often separately segregated because of their intimate relation to the plant accounts in the balance sheet; administrative expenditures because of their relation to the distribution of profits. A distribution similar to this latter scheme, containing operating expenses grouped under the general heading Maintenance, Conducting Transportation and General is that followed by the Interstate Commerce Commission in its classification of railroad accounts. It is also followed in the uniform classification for electric railways adopted by the Interstate Commerce Commission and the several state commissions, and it forms, moreover, the basis of tentative classifications of telephone accounts recently promulgated by the New York Public Service Commission, Second District.

The practice with regard to the grouping of operat-

ing expenses followed in the uniform classification of accounts of gas, electric, and water companies, has been essentially different, for the reason that it is designed to follow the chronological steps in manufacturing and delivering the public service, rather than to follow the nature-of-account theory. The purpose of this grouping is to furnish data relating to the cost of service. In the electric utility classification, for example, the total expense of steam generation, including maintenance as well as operating expense items, is separately grouped, for frequently these utilities engage in a steam-heating business. Similarly all items of cost to the station switchboard are separately classified, for, as is often the case, current is sold to large consumers at this point. Likewise the successive costs from switchboard to sub-station, from sub-station to storage battery, the cost of distribution to arc lamps or to consumer's premises, the cost of operating and maintaining the consumers' services under the variety of contract and free lamp renewal provisions, and finally the commercial expenses of collecting bills and promoting new business are separately reported. In the telephone classification, a central office or exchange expense would be separately grouped from wire plant or transmission expenses and from sub-station or terminal expenses. Those expenses pertaining to toll business would be localized from those pertaining to exchange service. This is the scheme followed in the Wisconsin classifications for water, gas, electric, heating, and telephone companies, in the New York Public Service Commissions, First and Second Districts, electric and gas classifications, in the classifications promulgated by the National Electric Association and the classifications of a variety of the syndicated operating companies. The great interest displayed in this basis of classification has

been due largely to the fact that, in recent "reasonable rate" cases affecting municipal utility plants, the factor upon which greatest emphasis has been placed in the briefs before both courts and commissions is what the service has cost and whether, considering such expense allowance, the gross revenue under a particular rate is sufficient to yield a fair return upon the investment.

Somewhat recently the theory of classification on the basis of cost of service has been carried one step further. It has been proposed that expenses be so grouped as to separate direct or prime costs from overhead or expense-burden costs and to so group direct costs as to localize (1) those expense items varying with the unit output such as the kilowatt hour, the gallon, the message mile, the cubic foot, the passenger mile, and the car mile; (2) those expense items varying with the unit demand such as the kilowatt, service, meter, message, passenger or car, and (3) those expense items varying with the number of consumers. These provisions are noted, for example, in both "The Report of Committee on a Uniform Scheme of Accounts and Reports for Water Supply Enterprises," American Water Works Association, 1910, and "Bureau of the Census Uniform Accounts for Systems of Water Supplies," 1911, page 8.

The accounts must so divide and subdivide expenses as to disclose the three elements which make up the total cost of service—the demand cost, the customer cost, and the consumption cost; and in turn must separate these costs into those that are fixed and those that are variable, so that from the data it will be possible to determine the equity and wisdom of the existing rates for service, and also to make all proper revision of incorrect rates for such service.

A similar grouping of accounts providing for a division

as between output demand and consumers is that now used by the Doherty Operating Company.

Such a classification has much to recommend it from a statistical standpoint, for it is evident that unit costs are most satisfactory when only those items of expense have been selected which vary with the unit divisor. Ideal units of comparison would disclose movement as distinct from terminal costs, in the traction business; output as distinct from demand and consumer costs, in the gas, water and electric business; readiness-to-serve costs as distinct from service-rendered costs in the telephone business.

The application of the classification of accounts as prescribed by the various state commissions to the variety of operating conditions in the separate utility plants, or, in other words, the idea of securing flexibility as well as uniformity has raised some important problems which cannot be said as yet to have been fully and satisfactorily dealt with.

According to several of the utility laws, notably those of New York and Wisconsin, the accounting classifications must be adapted to municipal as well as to privately owned plants. The municipal plant may be controlled by a superintendent, city engineer, board of public works, water and light commission, or by a committee of the common council. Services relating to that particular function of city government, the utility business, may be furnished by the city comptroller, clerk, treasurer, or attorney. Similarly the private plant may be, in form, a single proprietorship, a co-partnership, or a corporation; it may be a holding or an operating utility. Frequently a mutual association, originally operated upon a profit-sharing or other coöperative basis, such as the rural telephone company, has grown into the public

utility business largely in response to the demand made by outsiders for occasional service.

The uniform classification, furthermore, must furnish similar information for electric, gas, telephone, water, and street railway utilities and must adjust itself to the variety of methods of manufacturing or rendering service. Electric current may be generated by water power, steam power or by oil or gas engines. Gas may be manufactured under a variety of coal, water, oil or carbide processes. Telephone service may be rendered by a manual or an automatic exchange. Water may be obtained from wells, lakes, streams, or impounding reservoirs, and may be pumped or distributed in a large number of ways. These processes, moreover, are continually changing. The comparatively recent development of long-distance transportation of public service, for example, has opened up a variety of problems of adjustment which the original uniform classifications could not possibly have contemplated.

It is essential, also, that the successful classification be sufficiently broad in scope to furnish similar information for the large, medium-sized, and small utility plant. The tentative system of accounts for telephone companies, recently promulgated by the New York Public Service Commission, Second District, is limited by statute to companies having property actually used for public service exceeding $10,000. The Wisconsin Public Utility Law includes all telephone utilities operated for a profit. Had the New York classification been in effect in Wisconsin, 120 telephone companies would have reported for the year ending June 30, 1910, as against 506 actually making report under the Wisconsin law. Public utility plants exist in many towns of less than 1,000 population, and it is provision for these many small

utilities, operating upon a very limited expenditure basis, that must determine what are to be controlling accounts and other salient features of the accounting system.

Perhaps the problem of greatest difficulty is what provision to make for the separation of common expense items where two or more utilities are combined or conducted by a single company and managed by a single organization. This point of contact may be at the steam plant; the generation plant may be housed within the same building; or separate utilities may be controlled through a single general office. Most standard public utility classifications are silent as to the proper basis of apportioning or prorating these joint costs. Just how far these matters can be controlled by rule and how far they are affected by local operating conditions in each particular case can only be determined after the standard classifications have been in operation for some time.

Considerable progress has been made in securing a classification sufficiently elastic to meet these differences of organization, process, size, and scope of operation. Utilities confronted with the problem of making radical changes in their accounting procedure have made a searching examination of the accounting requirements and have been quick to point out just where uniformity would not apply to their particular plant. This has been particularly true of the small utility which had hitherto apparently felt no necessity for adopting a comprehensive scheme of accounts. Generally, however, the larger plants have recognized the advantages to be gained from uniform publicity and have aided much by their coöperation in making necessary adjustments in their accounting practice. Many of the various unsettled problems are now claiming the attention of standing committees of the various national utility organizations as well as the pub-

lic utility commissions. The question of economical and efficient bookkeeping procedure in following out required classifications has been made the matter of a separate bulletin by the Empire Gas and Electric Association, and the Wisconsin State Telephone Association.

Future tendencies will undoubtedly be in the direction of simplification rather than elaboration of the required accounts. Great detail of report is not necessary to disclose the possibility of improper charges, and reasonableness of requirements must be measured largely by the uses to which each item will ultimately be put. It is believed that the tendency towards standardizing the requirements of the various classifications will be hastened rather than hindered by the advent of the new public utility commissions.

CHAPTER XVI

THE PUBLIC UTILITIES COMMISSIONS OF MASSACHUSETTS

THE regulation of public service corporations by means of state commissions is a firmly established policy in Massachusetts. Long ago it passed its period of probation and took its place, in popular thought, as a natural and necessary duty of the state government. The railroad commission began its career more than forty years ago, in 1869; the gas and electric light commission dates back as far as 1885. Neither is an experiment. On the contrary, both have lived long enough so that their history may be analyzed and their achievements and shortcomings discovered with some reasonable degree of accuracy. The work of these and the other utility commissions in the state is described by Joseph B. Eastman, Secretary of the Public Franchise League of Boston, as follows:[1]

Recent commissions in other states have sprung into existence fully developed and armed, under comprehensive and scientific laws drawn with great care after a close study of similar laws and precedents. The Massa-

[1] This paper was first published in the *Proceedings* of the National Municipal League for 1908. It was revised and brought up-to-date by Mr. Eastman for this volume.

chusetts system of regulation was not so devised. It is rather the product of evolution, a structure built up by gradual accretion around the nucleus formed in 1869. In the early days the rights and duties of public-service corporations were but vaguely appreciated; the state was a pioneer in a new field, and it felt its way along step by step, doing, in effect, laboratory work by which the whole country has profited. As time went on, new classes of corporations were brought under supervision; new laws were passed; new powers devised. The result is a mass of legislation, by no means symmetrical in form, somewhat crude and confused in many respects, but still legislation which embodies a system of practical regulation and which contains at least the germ of nearly every important power now exercised by the various public-service commissions in the United States.

At present three different boards of three members each have charge of the major portion of this regulation.[1] The board of railroad commissioners has under its control railroads and street railways. It has also a limited jurisdiction over steamship lines and express companies, a jurisdiction to which the statements below in this paragraph apply only in part. The board of gas and electric light commissioners supervises gas and electric light companies; the highway commission, telegraph and telephone companies. The powers and duties of these three boards are similar in important respects, but differ

[1] In addition to these three boards, the state board of health has recently been given certain powers over the rates and service of private water companies. There is also the Boston Transit Commission, a board of five members, three appointed by the governor and two by the mayor of Boston, which has had charge of the construction of the subways and tunnels belonging to the City of Boston and whose advice is often sought by the Legislature on questions relating to the development of transportation facilities in that city

rather widely in details. All three must keep informed as to the condition and conduct of the companies under their supervision, make all necessary examinations and inquiries, and advise the Legislature if any new legislation seems expedient. They must report all violations of law to the attorney-general, and investigate serious accidents. In general the corporations must keep their accounts in a form prescribed, open their books to inspection at any time, submit annual, and in some cases quarterly, public returns giving sworn and detailed information in regard to their financial condition, management and operation, and furnish any further information that the commissions may desire. All three boards must give formal public hearings upon any complaint as to rates or service, signed by the mayor of a city, the selectmen of a town, or not less than twenty patrons of the company concerned. After such hearings and investigation, the railroad and highway commissions may *recommend* any changes that seem desirable, but the gas and electric light commissioners may issue positive *orders,* enforcible by legal process. No domestic railroad, railway, gas, electric light, telephone or telegraph corporation may issue stock or bonds beyond an amount which the appropriate commission certifies is reasonably necessary for the purpose required. More than that, no stock can be issued below par, nor can new shares be offered to stockholders except at a price approved by the commission.

These are the more important general provisions. In addition, all three boards have certain special powers and duties. Although it has long been its policy not to do so, the railroad commission may, under the statutes, act upon its own initiative in cases where no formal complaint has been made and recommend any changes in

rates or improvements in equipment and service which seem desirable; but no such authority is given either to the gas and electric light or to the highway commission. In the case of street railways, the statutes also give the railroad commission power to *order* additional accommodations whenever such action seems necessary. This, however, is another power which it has not seen fit to exercise. No steam or electric railroad may be built, or even extended, unless this board certifies that public convenience and necessity so require. No street railway can lay its tracks until the locations granted by the municipal authorities have met with its approval. It may even grant connecting locations between cities or towns and the right to carry trolley freight and express against the vote of the local authorities. In addition, it has extensive and important duties in connection with the abolition of grade crossings, and power to prescribe signals, fenders, switches and certain other safety appliances. The board of gas and electric light commissioners is given special duties relative to testing gas and electric meters and maintaining proper standards of pressure and of light. Moreover, no competing company can lay its pipes or wires in any city or town unless this board first grants permission. Numerous other powers and duties of minor importance might be mentioned.

These commissions are all conducted simply and at comparatively small expense. Their offices are plain, subordinates are few, and the commissioners themselves easily accessible to the public. Their hearings are conducted with few formalities and without the aid of special legal advisers, the chairmen being usually members of the bar. Only one commissioner receives a salary as high as $6,000 a year, and the total annual expenses of the three boards combined do not, as a rule,

amount to as much as $150,000, including the salaries of engineers, inspectors, accountants and other assistants.

Certain general results from this long-established policy of regulation stand out clearly. There have been no gross scandals in connection with the public-service corporations of Massachusetts since the Addicks gas invasion, back in the eighties. Such patent outrages as have characterized the traction companies of New York, Philadelphia, Chicago and other American cities have been conspicuous by their absence. Minor instances of this sort of thing have occurred, to be sure, but they have usually pointed the way, under the leadership of the commissions, to new legislation making their repetition impossible. In making these statements, however, I speak only of the corporations lying wholly within the State. The great interstate railroads, especially the New York, New Haven & Hartford, have sheltered themselves behind the looser laws of neighboring states so that their record is far less savory.

Among the intra-state corporations, certainly, there are probably very few cases of inflated capitalization. This assertion should be qualified by stating the fact that the entire capital stock of many companies is held by certain anomalous voluntary associations, precisely similar to the original Sugar and Standard Oil Trusts, which issue, against the stock which they hold, trust certificates, or shares, on a highly inflated basis, which are bought and sold in the market like shares of stock. These unincorporated holding companies and their pseudo-securities are not recognized by the commissions, but there can be little question that they are a menace to the investing and, indirectly, to the consuming public. The chief purpose of their creation has been to circumvent, so far as

possible, the anti-stock watering and certain other provisions of the statute laws.

The corporations have been well protected against destructive competition, while investors have discovered that publicity of accounts and the restriction of securities are decided safeguards. Their securities sell, in general, at notably high prices. As a rule, the corporations are disposed to concede the necessity and advantage of public regulation. Their one serious complaint has been that the laws in regard to the issue of stock are too stringent and have retarded proper growth and development. The old law, compelling the issue of new stock at the market value, did operate badly in one or two instances, and it has recently been liberalized. The price at which such stock may be issued is now fixed by the companies themselves, subject to the approval of the various commissions. Beyond that, there has been little evidence to back up the complaint. The contrary is true. For instance, relatively more street railways have been built in Massachusetts than in any other state in the Union.

Taking up the separate boards, the railroad commission has, looking back over the forty-two years of its history, a good record. In contrast with similar commissions in many other states, it has been reasonably free from political influence and has often enlisted the services of high-minded men of marked ability, a fact especially true of its chairmen. In the early days, Charles Francis Adams established the reputation of the commission for courage, enthusiasm and intelligence, and marked out for it a progressive and independent path. Some of its achievements are notable. The force of the arguments and facts presented by this board from time to time in the past did much to place upon the statute

books sound and progressive legislation. Under its guidance, for example, laws were passed to prevent the construction of useless roads, built only for speculative or blackmailing purposes; improvident or dishonest leases and consolidations were made well-nigh impossible; and the looting of street railway properties by companies organized under the laws of other states was checked.

Early in its career, for the first time in this country, the Board compelled the corporations under its supervision to keep uniform accounts by prescribed methods and to make returns that meant something. Cheap suburban fares, greater uniformity in passenger rates, 500-mile tickets, and the gradual adoption of a maximum fare of two cents a mile have all been advocated and to a large extent secured. Accidents have been promptly investigated and, as a result, the railroad companies have been forced to adopt safety switches, greatly improved bridge and track construction, automatic train and engine brakes, safety couplers and platforms, steam heat for passenger cars, improved rules for employees, tests for color-blindness, proper inspection of locomotive boilers, and, finally, automatic block signals. Electric cars have been fitted with fenders and vestibules and must be well heated. Practically all these improvements have been forced upon protesting and unwilling companies, as the records well show. But the commission did more, for it took the initiative in securing from Congress the present law requiring automatic couplers and brakes on freight trains. Nor should any record of achievements fail to record its effective work in preventing all new and dangerous grade crossings, and in securing legislation for the gradual abolition, with state and municipal aid, of those already existing.

In addition to this, the commission has always given prompt attention to complaints of all sorts. Probably ninety per cent. or over of all complaints are adjusted without the necessity of any formal action, sometimes over the telephone; but in several hundred cases public hearings have been held and formal recommendations made, ranging all the way from important changes in rates to such minor matters as the construction of new station buildings. The direct recommendations of the Board to specific companies are usually followed.[1] In the rare instances where they have not been followed, the Legislature has compelled action by special act. For instance, radical changes in rates were at one time recommended upon the old Housatonic Railroad, now a part of the New Haven system. They were not made and the Legislature immediately invested the Board with full power to fix rates upon that line and enforce them. As a matter of practice, the recommendation of this Board, made in a specific case after investigation and a hearing, is not very different from a positive order. The Board early took this position: "When the Board is asked to give a formal recommendation under the statute, it is not enough to show that the course is unwise. To call for such action it must be so unreasonable that if the recommendation is not heeded the Board will be ready to follow it by calling upon the General Court for legislation." Railroad and street railway managers in Massachusetts, up to the present time, have fortunately been susceptible enough to public opinion so that they

[1] The same thing cannot be said of the broad, general recommendations. The special laws, for instance, which have from time to time been enacted giving this Board power to compel the installation of various safety devices, have for the most part followed disregard, by the companies, of general recommendations.

have rarely had the temerity to brave any such process as this by disregarding a formal recommendation.

To illustrate what has been done without the use of positive orders, I need give only three typical instances which have occurred within recent years and which involve radical and far-reaching changes in passenger rates, methods of railroad operation, and even in the character of administrative policy. The recommendations of the Board brought (1) the sale of 500-mile ticket books at $10 a book upon all the railroads of the state, (2) remodelled rules governing train movement and methods of signalling upon the Boston and Maine, and (3) occasioned the overturn of the management on the Boston and Albany division of the New York Central, together with a definite change in the administrative policy of that road.

The board of gas and electric light commissioners for many years was the only public commission in this country having supervision over gas and electric light companies. The genesis of the law was singular, for it grew out of the application of existing gas companies in Boston to be protected against the threatened competition of the notorious Addicks. Perhaps for this reason the impression grew up that the Board was over-conservative and inclined to lean toward the corporation's side of the question. In past years its policy was too often indecisive and noncommittal, its movements were apt to be ponderous and slow, and its opinions lacked force and vigor. In its early history, also, it was inclined to be secretive with the detailed information in its possession, and it failed to make the tables and statistics in its reports of proper value to investigators.

This commission, however, has done much good work. It has helped to keep speculators and exploiters out of

the Massachusetts gas and electric light companies. As a rule, these companies are strong and well managed along conservative lines. Whenever formal complaint has been made, the Board in almost every instance has ordered substantial reductions in rates after careful investigation. Like the railroad commission, it handles a great many complaints informally, and secures amicable and satisfactory adjustments. In addition, it has often succeeded, and this is especially true in recent years, by quiet advice in persuading companies to reduce rates or improve service voluntarily. It has kept unwise competition out of the field with an iron hand, and has done effective work in supervising small municipal plants, helping them to keep their accounts in proper shape and to adopt wise methods of doing business. It has enforced uniform accounting by the companies, and has built up a system of meter testing which has been widely copied in other parts of the country. It is a pleasure to record that this commission has made a marked advance in popular regard in recent years, and it may fairly be said that its decisions, at the present time, are more informing and exhibit more strength and independence of thought than the decisions of either of the other commissions.

The highway commission has had control of telephone and telegraph companies since 1906 only. Its one important investigation has been of telephone service and rates in Boston and its vicinity. The results of this investigation are still a subject of somewhat violent controversy. It cannot be said that the recommendations of the commission have improved service or reduced rates in any marked degree. It is probable that this feature of the Massachusetts system of regulation, at least, has not reached its final resting-place. The highway commission has comprehensive duties which have noth-

ing whatever to do with the regulation of public-service corporations, and it has sufficient business on its hands without this excursion into a radically different field of operation.

In any discussion of the public utilities commissions of Massachusetts, one or two striking features in the system of regulating public-service corporations, apart from the commissions, should have consideration. It is not the custom in Massachusetts to grant permanent franchises or franchises for a limited term of years. On the contrary, the franchises of all public-service corporations, except steam railroads and the elevated railway of Boston, are indeterminate and revocable at will.[1] For example, after a street railway has been in existence for one year, it is provided in the statutes that the local authorities may revoke any location without liability in damages, if the public convenience and necessity in the use of the streets so require, and if the railroad commission gives its approval. In other words, the grant of a location is substantially a license during good behavior. How this law may operate is shown very clearly by the case in which the constitutionality of these revocable franchises was fully sustained by the Massachusetts Supreme Court. When the new South Station was constructed in Boston, the location of several streets, in which conduits of electric light and telephone companies were laid, was changed. The Boston authorities ordered these conduits taken up, and the Supreme Court sustained their right to do so, refusing to allow the companies one cent of damages, on the ground that they held

[1] It is sometimes claimed by the gas, electric light, and telephone companies that their locations in the public streets are not subject to revocation. The decisions of the courts, however, furnish no basis whatever for this claim.

no property rights in the streets and that their conduits were personal property, which they were free to remove.

The principle of these revocable franchises has met with entire public approval. The power of revocation is seldom, if ever, exercised; but the very fact that it exists makes the corporations more amenable to the force of public sentiment.

The corporate franchise tax in Massachusetts is really a device for securing to towns and cities substantial compensation for the franchises which they grant, graded automatically according to the actual value, for the time being, of the franchise to the corporation. It is assessed upon the total market value of a company's capital stock, less the value of real estate and machinery locally taxed. If, therefore, a company is doing a good business and finds its franchises decidedly valuable, the market value of its stock rises in sympathy and along with it the corporate franchise tax grows larger. Over three and a half million dollars is paid in to the state every year on this tax, and it is either distributed directly in due proportion to the cities and towns, or, what amounts to the same thing, it is retained in the state treasury and helps to decrease the state tax. Under this system the people of the various communities are, in effect, given the option either of applying to the commissions and securing reductions in rates and prices which will do much to wipe out the franchise tax, because of their effect upon the market value of a company's stock, or of treating the company more generously and reaping a compensation in the franchise tax. Under this system, too, the burden falls upon the companies according to their strength, and any that happen to be financially weak are not driven into more desperate straits by the necessity of paying heavy tribute for grants of little value. It is

the policy of the state to exact no other compensation for franchises, except in certain special cases, and the reasons are well stated in the following quotation from a report of the railroad commission:

It has been more or less seriously proposed to make the ordinary use of the surface of the street for railway purposes a source of revenue or relief to the municipal treasury, either by sale of the railway location, or by an excise on cars, or a tax on earnings, or by requiring the railway company to pave or otherwise maintain the surface of the entire roadway. There is no reason why the railway company should not pay a tax on its corporate franchise and property, such as other similar corporations pay. It is also proper that it construct at its own cost the tramway specially adapted to its use and keep the portions of the roadway adjacent thereto in safe condition for other travel, as is now required by statute. These charges are a part of the cost of transportation which the passenger must expect to pay. Beyond this, it is not easy to see why one who carries passengers for hire in a car should be subjected to a tax for the use of the street, any more than one who carries passengers for hire in an omnibus, or who carries merchandise for hire in a dray.

The radical objection to the proposed impost is not, however, that it is a burden on the railway company, but that it is a tax on the travelers. A tax on the carrier is a tax on the passenger. Whatever fare the railway passenger might otherwise have to pay, he must pay in addition to that fare his proportion of the tax, and the possibility of the reduction of his fare is to that extent postponed. Nothing has hitherto been more free than the use of the roadway, for all persons, and for all purposes of travel or transportation. There is no good reason why the person who travels in a street car should pay, directly or indirectly for the privilege of traveling on the highway, any more than the person who travels in a public coach or in his private carriage.

The two questions, therefore, in regard to the regulation of public-service corporations, which have been a source of great trouble to city authorities in other parts of the country, namely, the length of franchise grants and the amount of compensation, are settled in Massachusetts by a uniform rule embodied in the general law.

For the rest, the field of regulation is divided between the commissions and the local authorities. But the latter are given a free hand only in matters of purely local concern which cannot be handled to better advantage by the commissions, and only so far as they do not inflict indirect injury on other parts of the state.

There is very little feeling in Massachusetts that this division of labor is a violation of the principle of "home rule." Nor is there any likelihood that power will be taken from the commissions and placed in the hands of the cities and towns. On the contrary, the commissions are generally accepted as necessary and desirable, and have established their right to a permanent place in the state system of government. It is a question of expediency. A city like Chicago may be able to regulate her public-service corporations effectively without interference from the state, but the ordinary small city cannot command the expert knowledge or the general ability necessary to handle questions of rates and service. It is therefore right and proper that all cities should delegate such duties to a central board which can devote its entire time and attention to these questions and establish a wise and uniform policy for the entire state.

But there is another and a stronger reason for regulation by state commissions, which is this: There is hardly a public-service corporation in Massachusetts, at least, which does not spread beyond the boundaries of a single city or town. The street railway system of Bos-

ton extends out into the suburbs for miles, and the electric light company of the same city supplies towns as far away as the Rhode Island boundary. These are only typical examples. The public-service corporations of the present have lost their local characteristics and have become distinctly interurban. To leave their regulation to the separate cities and towns would be as unwise as it would be to attempt to regulate interstate commerce through the efforts of the several states. If one city should place too harsh restrictions upon a company, others would suffer in consequence. This is the reason for the instances of commission supervision over the action of municipal authorities in Massachusetts which seem at first sight unwarranted. For example, the local authorities may grant locations to street railway companies when and where they please, and may surround the grant with such conditions and restrictions as they see fit to make; but the railroad commission may review the grant and withhold its approval if it seems to be at all inconsistent with the public interest. This power was not given to the commission on mere theoretical grounds, but as the result of actual experience. Grasping towns had acquired the habit of holding up new street railways, compelling them to widen, regrade or pave the streets or make some other extraordinary expenditure before locations would be granted. Wherever such action was short-sighted and unwise, the other towns on the line shared in the unfortunate results. The personal liberty of the individual is limited by his duty not to injure others, and the same rule applies to cities and towns. The public utilities commissions of Massachusetts do no violence to "home rule;" rather, they protect the equal rights of the various communities and keep them from harming each other.

It may safely be said, then, that the principle of these commissions is a permanent feature of Massachusetts government. It by no means follows, however, that they will not be changed in form or otherwise improved. Last year Governor Foss in his inaugural message recommended the creation of one public-service commission, with enlarged authority over all public-service corporations, to take the place of the present commissions. While there was little direct result from this recommendation, the state is undoubtedly watching with great interest the operation of the new commissions in New York, Wisconsin, Ohio, New Hampshire and other states.

Conditions have changed radically in Massachusetts in recent years. At the time when the railroad commission was created, and for a long time afterward, there was no dominating influence among the railroads. The companies were numerous and small, owned and managed, as a rule, by residents of the state, and therefore naturally susceptible to local public sentiment. But New England is now nearing the end of a period of railroad reconstruction. The control of Massachusetts railroads has passed out of the state and into the hands of men stronger and harder to curb. The New York, New Haven & Hartford, controlled by great financial interests centering in New York, now dominates the railroad and water transportation situation throughout all New England. The recent career of that company leads many to believe that the instruments for the public regulation of railroads in Massachusetts should now be strengthened; but, quite apart from the question of the merits or demerits of that company, they also believe that so vast a private monopoly will never enjoy popular confidence nor escape constant suspicion until the people of the state are convinced that their commission has an ability and

powers and resources in some degree comparable with those of the monopoly which it regulates. And what is true of the railroad situation in Massachusetts is gradually becoming true of the situation with respect to the other public-service corporations.

While the public utility commissions of Massachusetts have, on the whole, an excellent record, indications are beginning to accumulate, and this is especially true of the railroad commission, that they do not now occupy the place in popular thought and esteem which they ought to occupy under present conditions. It is a remarkable fact that the railroad commission had no part in the discussion and settlement of the great New Haven, Boston & Maine "merger" question in 1908-9. Nor was its influence felt, to any noteworthy degree, in the recent satisfactory settlement of the Boston transportation questions which embroiled the last Legislature. Nor did the gas and electric light commission play any important part in the settlement of the puzzling Boston gas problem in 1905-6. The last Legislature actually granted the proposed Boston & Eastern Electric Railroad a charter over the heads of a majority of the railroad commissioners, whose divided and uncertain attitude on this question failed to command respect.

It is also significant that, in recent years, perhaps the most important transportation questions have been referred to temporary and special commissions. The railroad and street railway laws were revised in 1906 and a new interurban or electric railroad law considered and drawn by a recess committee of the Legislature. In 1907-8 the railroad "merger" question was considered by a special commission on Commerce and Industry. At the same time the question of improved railroad facilities for Boston was under consideration by a special commis-

sion on Metropolitan Improvements. Last year a special Joint Board reported on the important question of the electrification of the railroads entering Boston. It is difficult to believe that questions of this nature, so obviously proper subjects for consideration by a railroad commission, could have been shunted off to short-lived commissions without experience in such problems, if the railroad commission had the personnel, the organization, and the place in popular esteem which it ought to have.

The public utilities commissions of Massachusetts differ rather radically in certain important respects from the newer commissions in New York and Wisconsin. The Massachusetts commissions do not act upon their own initiative in questions of rates and service. The railroad commission has the power, but for a number of years it has been its policy not to exercise it. The gas and electric light and the highway commissions can act only upon complaint. Nor do the Massachusetts commissions have the expert assistance which those in New York and Wisconsin enjoy. The gas and electric light commission has no expert assistance at all, save in its meter inspection department. The highway commission was provided by special act of the Legislature with such assistance in the Boston telephone investigation, but has no regular staff. The railroad commission has some accounting and engineering assistance and a small force of inspectors, but no such highly organized staff of employees as is found in the other states. Finally, the Massachusetts commissions, with the exception of the gas and electric light board, have no general power to issue orders, but can only make recommendations.

Every public utility commission combines judicial and administrative functions. Summing it up, the present policy in Massachusetts seems to be to emphasize the

judicial functions. The commissions stand as courts of appeal, to whom citizens unable to secure from the corporations the rates or service they desire may apply for an impartial adjudication. The commissioners do not seek trouble on their own account. When a case is presented to them they do endeavor to make an independent investigation of the facts, but their facilities for doing this are, in general, limited. Too often the commissioners are compelled to rely upon unchecked statistics furnished by the companies themselves. It may also be said that the decisions of the commissions, at least those of the railroad commission, are more nearly mere statements of finding than are the decisions of the New York and Wisconsin boards. They are less informing, contain a far less complete review of the facts, and present less adequately the train of thought by which the final decision was reached. One reason for this has undoubtedly been the fact that the railroad commissioners have, in recent years, been overwhelmed by minor details of their work which could, with a better organization, have been handled as well by subordinates.

There are many in Massachusetts who believe that the present system of regulation goes far enough. They believe that, if the corporations are required to keep their accounts in a uniform manner and to make public returns, and if the issuance of their securities is carefully regulated, and if steps are taken to insure public safety in operation, it is sufficient if a public tribunal is established where all who have complaints to offer may secure a hearing and receive a fair adjudication. They feel that to give the commissioners broader powers and duties would involve an unwarranted interference with the management of private corporations, which those who furnish the capital and assume the risk have a right to re-

sent. They also fear the establishment of what they term bureaucratic methods of government.

There are others who believe—and the writer is one of these—that the principle of public regulation may well be carried a step farther in Massachusetts. They believe that, when monopolies are established and protected by law, the government should actively and aggressively see to it that those monopolies charge fair rates, do not discriminate, and give the best possible service; in other words, that the government should, to the best of its ability, take the place of competition. They believe that the government should, in doing this work, have the benefit of the best expert assistance available and the best facilities possible for collecting and checking information. They believe that protection against destructive competition is sufficient compensation for any interference with private management which this may involve, to say nothing of the interpretation which the courts have placed upon the fourteenth amendment of the constitution. They believe that private citizens should not be required to assume the burden of presenting a case before a public tribunal in opposition to shrewd corporation attorneys, in order to secure the rates or service justly due them.

These differing conceptions of the proper scope of the public regulation of public-service corporations have already clashed in Massachusetts. They are likely to clash still more as time goes on. What the final outcome will be it is not the province of this paper to predict.

CHAPTER XVII

THE WISCONSIN PUBLIC UTILITIES COMMISSION

DR. BALTHASAR H. MEYER, formerly chairman of the Wisconsin Railroad Commission and now a member of the Interstate Commerce Commission, presents the following discussion of the attainments of the Wisconsin Commission:[1]

The public utilities law of Wisconsin was enacted July 9, 1907. It confers jurisdiction upon the commission over companies producing or transmitting light, heat, water, power, and over telephone companies. The railroad commission law of 1905 conferred similar jurisdiction over steam and electric railroads and all instrumentalities of transportation connected therewith, as well as over telegraph and express companies. Both the railroad commission law and the public utilities law, together with some thirty-five additional statutes, are administered by the railroad commission of Wisconsin. When the duties and powers of the commission were very greatly extended in 1907, through the enactment of the utilities law and other statutes, the name of the commission was not changed. While, therefore, the railroad commission is, in effect, a public utilities commission, performing all

[1] A paper read at the Pittsburg Meeting (1908), of the National Municipal League.

the duties and functions which such a commission may well be imagined as performing, it is still legally the railroad commission.

The general legal and administrative principles which underlie the railroad commission law also underlie the public utilities law. Like the railroad commission law, the public utilities law imposes upon the respective managements of private and municipal plants the duty of establishing reasonable rates and regulating reasonably adequate service in the first instance. The initial responsibility lies with the managements, who must select the agencies, materials, and methods through which the service is provided. All rates, rules, regulations and service may be challenged at any time, and revised or modified by the Commission. The theory of the law and its administration is to place the respective managements on the defensive, throwing the burden upon them to justify their rates and service whenever the issue is raised before the Commission.[1] The Commission may act both upon complaint and upon its own initiative with respect to all matters relating to public utilities.

The most important provisions of the public utilities law may be grouped about four leading heads, namely, valuation, accounting, rates, and service.

The law imposes upon the Commission the duty of

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[1] Said the Commission in a recent case:

"To fulfill its public duty, every public service corporation must at all times keep and maintain its plant in a proper state of repair and in an efficient operating condition, adopt new inventions as they arise, make extensions and improvements of its plant when necessary and required for the convenience of the public, and continue its services without cessation whether profitable or unprofitable." (*Berend v. Wis. Tel. Co., 1909*, 4 W. R. C. R., 150. 155.) *In re Appl. Oconto City Water Supply Co., 1910*, 5 W. R. C. R., 691, 692, 840.—THE EDITOR.

valuing all the public utility plants in the State of Wisconsin. Up to the present time, by far the greater number of plants which have been valued were valued in connection with proceedings in which they were involved. Naturally, this order of valuation will soon have to be broken when the number of complaints involving rates will probably decrease and the Commission can then take a survey of the whole field and systematically complete the valuation of all the plants as contemplated in the law. Such valuations must be published within five days after the same have been determined by the Commission.

The first, and perhaps most important, step in valuation of these plants is the valuation of the physical property. The law requires a valuation to be made of all the property used and useful for the convenience of the public. Perhaps in all cases the great bulk of such property is the physical property. At the outset the engineers of the Commission solicit the aid of the engineers of the various companies and preliminary conferences are held, at which all parties in interest are represented for the discussion of ways and means of making the valuation at the least possible expense to the state and to the companies and with the least possible interruption of the routine work of the utilities. In part jointly with the State Tax Commission, the railroad commission maintains a considerable engineering staff, which is subdivided into teams, each team devoting itself to a particular branch of the work of valuation. In addition to these there are, of course, inspectors, to whom reference will be made in another connection. Where the companies have made a careful inventory of their property, the engineers of the Commission take this, check it up, and test it in the field and in the office, item by item. This has been the general rule, and it is a matter of satisfac-

tion to be able to state that in several instances of the valuation of important plants the differences between the company's staff and the commission's staff were so slight that little time was devoted in formal proceedings before the Commission to the inventory or physical valuation. In other cases, again, many apparently irreconcilable differences developed and much time of the Commission had to be devoted to the taking of testimony with respect to the terms in dispute.

Thus far, only one valuation has been made for the purpose of acquisition of a private plant by the municipality under the indeterminate franchise provisions of the law. In connection with this work, the engineering staff of the Commission has collected and compiled elaborate data relating to prices and lives of all the constituent parts of the physical plants of all the different classes of utilities. These data constitute one of the most valuable resources within the reach of the Commission upon all questions of physical value.

In addition to the physical value, there naturally arise the questions of the value of the franchise, good will, and going value. Thus far, practically no utility managements have claimed franchise value to be used by the Commission in the establishment of rates.[1] The element

[1] The Commission's attitude toward franchise values is stated in the following decision:

"It must be clear that in estimating the capital upon which a public service company is entitled to a fair return, the value of a franchise enjoyed by the company cannot be considered. The value of the franchise is itself based on the capacity of the company to earn profits and it becomes greater when the earnings of the company are increased. If, therefore, a high rate of income could be justified on account of the great value of the franchise, this fact would in turn enhance the value of the franchise itself and so justify a still higher charge; and there would be no limit to the legal charge

of good will has scarcely been mentioned as an element separate and apart from going value. Incidentally, it may be remarked that the statutes of Wisconsin treat all utilities, except telephones, as monopolies, as shown by the provisions of the utilities law relating to indeterminate franchises,[1] and the granting of the certificate of conven-

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of the company until the limit of charge which was in fact possible as a matter of business had been reached. In one case there is a dictum that the value of the franchise may be considered in arriving at the proper basis for just compensation, but it is submitted that the suggestion is unsound. A different question arises when the value of the property of the company is estimated for the purpose of taxation. The franchise is owned by the company, is of value and, would be paid for if the whole business were sold; and it should, therefore, be taxed. This is, of course, a tax on the actual value of the franchise as it exists at any particular time; and the imposition of it is quite consistent with the value of the franchise, being subject to diminution by a diminished income as a result of legislation reducing rates." (Beale and Wyman, Railroad Rate Regulation, secs. 362, 363.) *City of Appleton v. Appleton Water Works Co., 1910*, 5 W. R. C. R., 215, 282, 826.—THE EDITOR.

[1] As to which the Commission has said:

" Under the statute an indeterminate permit is more valuable than the ordinary special franchises, because under the permit the company has legally protected monopoly and is subject to no different supervision and regulation than it would have been had it continued to operate under its original grant. Furthermore, its investment is now protected not only against the consequences of competition, but also against the possibility of total loss on the expiration of the original grant. It can never be deprived of its property except on the payment of the fair value thereof by the municipality. While such indeterminate permit or franchise is of great value to the respondent, it could not operate to enhance the value of the property upon which returns must be computed." *City of Appleton v. Appleton Water Works Co., 1910*, 5 W. R. C. R., 215, 284–285, 829.—THE EDITOR.

ience and necessity.[1] The telephone business is, however, still subject to the inroads of competition, and so far as the statutes are concerned, it is technically a competitive business. It is, therefore, not impossible that in the valuation of telephone plants, an element of good will, using this term technically, as something different than "going value," may have to be included, which will probably have to be excluded in the case of all other classes of utilities.[2] In fact, several companies have explicitly stated in their testimony that they made no claim of franchise values and good will. Under the head of

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[1] Said the Commission in a case in 1910:

"The legislature doubtless intended that, through the administration of the Public Convenience and Necessity Law, destructive competition and rate wars, and competition in all forms injurious to the public interest, should be prevented. The legislature could not have desired to eliminate all competition absolutely. If this had been its desire, what would have been simpler than to say it in so many words? The law does not say that it shall be made the instrument for eliminating all competition in any form whatsoever at every point. If such a construction were to be placed upon the law, it would in most if not in all cases be impossible for any railway to be constructed in the future to enter any city in which there is an existing railway, because it is axiomatic that in the railway world, within proper limitations, every railway competes with every other railway, largely independent of the exact geographical location of the competitors." *In re Appl. Milwaukee and Fox River Val'ey R. Co., 1910*, 5 W. R. C. R., 466, 474, 810.—THE EDITOR.

[2] The Commission holds that:

"Good will is an attribute of competitive business. It follows that, where competition actually exists which is effective and controlling in force, some allowance may have to be made for good will in determinating the value of a plant for certain purposes. Valuation for rate making is not one of these purposes." *Payne et al. v. Wis. Tel. Co., 1909*, 4 W. R. C. R., 1, 60, 929.—THE EDITOR.

going value,[1] representations have been made to the effect that all the way from 5 to 100 per cent. of the physical value should be added in order to arrive at the

[1] The Commission in a formal case has made the following distinction between going value and the value of a going concern:

"In the testimony going value was defined as that value which is added to the physical value of a plant by virtue of the successful and harmonious operation of the whole, and the coordination of the various parts. This might, with propriety, be termed a definition of the value of a going concern as distinguished from going value or the uncompensated cost incurred in building up the business. The value of a going concern is generally greater than the sum of the values of separate physical parts of the plant. The seller of such a plant is in a position to exact more, and the purchaser would generally be willing to pay more, than for a plant which has no established business. In expropriation proceedings, likewise, the owner or owners of a plant which is a going concern would doubtless be awarded a arger amount of damages than the owner or owners of a plant which had not yet been placed upon a going basis. But this 'more' in the value of a plant in the case of purchase and sale, or expropriation, is not a matter in which the public is interested in proceedings of this kind. This 'more' is not property used and useful for the convenience of the public within the meaning of the statute. On the other hand, if property is devoted to the public use, and reasonable care has been exercised in all the phases of its management, but the owners have not received a fair return during the earlier years of the operation of the plant in which the property is used for the convenience of the public, the deficit thus incurred must be made up out of the later earnings, insofar as this is commercially possible and expedient. In other words, every effort honestly put forth, every dollar properly expended, and every obligation legitimately incurred in the establishment of an efficient public utility business must be taken into consideration in the making of rates for such business. Collectively the elements just referred to may be designated by the term going value, and in this sense there can be no question regarding the propriety and justice of admitting going value as a consideration in the determination of rates." *Payne et al. v. Wis. Tel. Co. 1909*, 4 W. R. C. R., 1, 60–61, 831.—THE EDITOR.

true and lawful value to be used in the establishment of just and reasonable rates. The widest range of reasoning is embraced in this class of testimony now before the Commission.

If any one tendency in this testimony may be characterized as typical, as compared with other tendencies represented in the same testimony, it is the tendency to make a going value stand for expense which has been incurred for outlays and services in connection with the upbuilding of the business of the utilities, and in return for which no adequate remuneration has hitherto been made. In other instances, going value has been represented as something very real, existing in connection with every plant, entirely independent of expense, past losses, or profits, and capable of fairly definite quantitative determination.[1]

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[1] The following excerpts from decisions of the Commission state some of the more vital principles adopted in determining valuation:

In general.

"The value of the plant, from the standpoint of the rate schedule, does not always admit of ready analysis. An inventory of the property and its appraisement furnish a tangible basis, but alone may not be reliable, since it may not always take full cognizance of unusual obstacles in organization, incorporation and construction, fluctuations in prices of materials, labor difficulties, contingencies, etc. These items of expense, under proper accounting, are revealed from the construction records which should show, by proper entries, all disbursements properly chargeable to construction. Other factors, however, such as depreciation through wear and tear in service, the failure of the management to keep its property abreast of the march of invention and progress, the extent to which the facilities of the plant are capable of supplying the needs of a growing and shifting population, are elements of present value. Taken alone, not any of these methods of determining value is conclusive. They merely supply evidence of what is a proper solution. When, however, they are all considered, so that there shall be elim-

The law gives the Commission the power and makes it its duty to prescribe uniform forms of accounts for all the public utilities operating within the state. Soon after the enactment of the law, the various utilities submitted financial statements to the Commission, which, in a measure, gave some indication of the extent and character of the accounts kept by them. A number of conferences were then held, a great deal of detailed work was done under the direction of the Commission, the titles of the leading

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inated individual fluctuations and abnormal situations and the plant gauged by broad standards of reasonableness, it is possible to ascertain the fair present value with approximate accuracy." *City of Ripon v. Ripon Lt. and Water Co., 1910*, 5 W. R. C. R. 1, 6, 7, 908.

"The company is entitled to a fair return, not always upon the cost of the property, because it may have cost too much; not always upon the outstanding indebtedness, because it may be in excess of the real value of the property; not always upon the total amount invested, because some portion of that which is acquired by the investment may be neither necessary nor presently useful for the public service; but upon the fair present value of that which is used for the public benefit, having due regard always to the reasonable value of the service rendered." (*Spring Valley Water Co. v. San Francisco, 1908*, 165 Fed., 667, 680.) *Fullmer v. Wausau St. Ry. Co., 1910*, 5 W. R. C. R., 114, 124, 909.

"In determining the fair value of the tangible property, the total investment in the plant at the time of appraisement, the original cost of construction and subsequent additions and extensions, the cost of reproduction new, and the present value of the same are the only satisfactory evidences which can be adduced, bearing upon the question. These factors form a fairly reliable basis for the deduction as to the fair value of the physical property. However, in weighing these various factors, consideration must be given to all the facts and circumstances surrounding the same, and neither of the factors mentioned is controlling or determinative in reaching a final conclusion, although some may have greater probative effect under all the circumstances than others." *City of Appleton v. Appleton Water Works Co., 1910*, 5 W. R. C. W., 215, 219, 915.
(Continued on page 305.)

accounts were sent out to the different companies, in order that the respective managements might begin to shape their books with reference to the same, and then, in due time, the final forms were officially promulgated. The theory of this system of accounts is that the books shall be kept in such a way that, after the physical value of a plant has once been ascertained, the valuation will be kept up practically in a systematic way, so that the Commission, or any other authority, may see from year

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Necessity of allowance for depreciation.

"Previous decisions have given recognition to the fact that some allowance should be made for depreciation. . . . It is admitted that, generally speaking, an operating public utility plant is limited in life; that even where current repairs are properly met and the utility efficiently maintained, there exists a loss in value directly dependent upon the length of operation; that such losses are always present, whether a plant be in its initial or last stages of operation, and that such losses are properly borne by the consumers and properly made a charge against the revenues of the company. Such an allowance is in keeping with the provisions of the Utilities Law providing that depreciation be considered in determining reasonable rates." (*State Journal Printing Co. et al. v. Madison Gas and El. Co., 1910*, 4 W. R. C. R., 501, 599.) *Cunningham et al. v. Chippewa Falls Water Works and Ltg. Co., 1910*, 5 W. R. C. R., 302, 328, 815.

"It is evident that the loss from depreciation must be met by the consumers of the service and paid for by the rates, or the loss will later have to be replaced by new capital." *In re Appl. Jefferson Municipal El. Lt. and W. Plant, 1910*, 5 W. R. C. R., 555, 560, 815.

Rate of depreciation of water plant.

"The results obtained in determining the composite life for a number of water plants in the state which are similar to the one under consideration, show that such plants have an average life of about 65.25 years. That water utilities possess a comparatively long life is made evident by comparison with the average lives determined for nine electric, six gas and seven electric railway utilities in the state, which are found to be 17.46, 33.68 and 18.02

to year exactly what the financial condition of any particular plant is. The system of uniform accounts applies both to private plants and to municipal plants. This feature of the law is especially noteworthy in that it at last makes it possible to establish a comparable basis for public and private plants. Investigations made thus far by the Commission show that not only does great variety exist among the private plants, but also among the public or municipal plants, and that the accounts of the

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years, respectively." *In re Fond du Lac Water Co., 1910*, 5 W. R. C. R., 482, 502, 817.

"No composite life of the water plant in the case under consideration has been worked out, but there appear no conditions which would make the average life of this plant differ very materially from the average of such plant lives in this state. In the present case an annual allowance of perhaps 1.5 per cent. of the value of the total property of the water plant would seem sufficient to provide for depreciation." *In re Appl. Jefferson Municipal El. Lt. and W. Plant, 1910*, 5 W. R. C. R., 555, 560, 817.

Privately and publicly owned plants.

"In estimating the costs for municipal as well as for privately owned plants, it would seem to be necessary to take into consideration the operating expenses, depreciation, taxes and interest on the investment. Operating expenses, including depreciation, are always present, and must be actually met, no matter by whom the plants are operated. Taxes and interest charges may, in a sense, be dispensed with for municipal plants. That is, neither taxes nor interest may be actually assessed against such plants. On the other hand, taxes and interest charges are present in some form in all industrial activiti s. Water works represent property that is of value and in which money has been invested. They constitute a part of he capital of the city. If such items as fixed charges are not considered by municipal plants in fixing rates for private consumers, it would seem that these consumers would be favored as against the tax payers. There does not, on the whole, appear to be any equitable ground upon which such charges can be entirely eliminated in any industry or in connection with the services of any public utility." (*In re Application of Madison City Water*

municipal plants are, in many instances, only partial accounts, not showing all the operations and expenses of such plants. While this is generally true, it can best be shown from the water works investigations. In eight Wisconsin cities of over five thousand population, the municipal water works accounts show that there is no credit given for public service, four of these showing a deficit in the year, which in three cases would very likely disappear and show a surplus, if the plant were credited with revenues which justly belonged to it.

Works, 1909, 3 W. R. C. R., 299, 320.) *In re Appl. Jefferson Municipal El. Lt. and W. Plant, 191* , 5 W. R. C. R., 555, 559–560, 880.

"As to he rate of interest to be allowed, there is reason for making a distinction between privately and publicly owned utilities. If the same rate of return were to be allowed, other things being equal, the consumer would hardly have any advantage in taking service from a municipal plant. But a difference in the rate of interest will give him all advantage, outside of other considerations. In the present case the city pays from 3½ to 4 per cent. interest on the bonds issued to cover the water plant. A private plant would demand at least 6 per cent. or more. If the city is permitted a return of 4 per cent. on the investment, the saving in interest over a privately owned plant on a 6 per cent. basis amounts to a considerable sum." *Dick et al. v. Madison Water Com., 1910*, 5 W. W. C. R., 731, 745, 897.

Unearned increment.

'If real estate has enhanced to such an extent that a return upon its value would be in excess of the reasonable value of the use for the purposes to which it is devoted, the excess value should be treated as surplus and not as a part of the investment upon which the public is required to compensate the owner for the service of the property." (*Spring Valley Water Co. v. San Francisco, 1908*, 165 Fed., 667.) (*Capital City Gas Light Co. v. Des Moines, 1896*, 72 Fed., 829, 844.) (*Boise City I. and L. Co., v. Clarke, 1904*, 131 Fed., 415.) (*Cons. Gas Co. v. New York, 1907*, 157 Fed., 849, 854.) (*Wilcox v. Consolidated Gas Co., 1909*, 212 U. S., 52.) *City of Appleton v. Appleton Water Works Co., 1910*, 5 W. R. C. R., 215, 224–225, 919–920.—THE EDITOR.

Out of the fifty-six municipal water plants in cities under five thousand population, thirty-three reported a deficit for 1907. Of this total number twenty-five cities did not credit the plant with any earnings for public service, and of these twenty-five city plants, twenty-two showed a deficit. Twenty-eight municipal water plants showed no general expense whatever, such service being furnished by other city employees. Under the proper separation of accounts and the adoption of a uniform system, an entirely different situation, just to the city and to the plant management, would be revealed.[1]

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[1] The Commission's recent investigation and ruling on the Madison water plant offers a case in point:

"The Commission on its own motion investigated the organization and business conduct of the municipal water plant at Madison, Wis. It was found that the accounts of the water department as kept in the past, are entirely inadequate. A thorough examination of the financial operations of the plant for some years past shows that the management has been absolutely honest. Every cent can be accounted for. However, no proper accounts have been kept, and charges have been incorrect y made to construction and operation, and *vice versa*. Such accounts as have been kept do not reflect nor give the opportunity to ascertain the actual condition of the business at the termination of any given period of time. Neither the board of water commissioners nor a citizen could ascertain from these records the actual state of affairs with reference to the water plant without a vast amount of labor. It was practically impossible to determine the condition of the business. The Commission was obliged to construct the accounts of the plant largely from original vouchers, extending over the entire period of its investigations. The only accounts which are being kept at present are 'Construction,' 'Special Construction,' 'Operation,' and 'Repair.' Neither 'Operation' nor 'Repair' are subdivided, Without such subdivision it is impossible to check irregularities. It is ordered that the Board of Water Commissioners of the City of Madison hereafter keep full and complete records of the operation of the water system under its control as required by law and in the forms prescribed by this Commission. Jan. 1, 1911, is deemed a

As previously suggested, the managements of the private companies and municipal plants establish rates in the first instance. Such rates are subject to revision by the Commission, either on complaint, or on the initiative of the Commission. The Commission has been endeavoring to elaborate the principles upon which just and reasonable rates should be based for all the different utilities, and in a considerable number of instances schedules have been prescribed in which these principles are discussed. Many more schedules are still under consideration, and the Commission hopes that, in the not distant future, all the utilities operating within the state will make their rates in accordance with uniform principles representing the latest and best which scientific methods and thought can contribute.[1]

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proper date upon which to put this part of the present order in effect." *Dick et al. v. Madison Water Comm., 1910*, 5 W. R. C. R., 731, 743, 789, 791, 805.—THE EDITOR.

[1] Some of the more significant principles stated by the Commission in its decisions are:

" Where the number of hydrants and character of fire protection demanded by the municipality is such that it occasions 65–22 per cent. of the water utility investment and 47 per cent. of the operating expenses, but pays rates which yield only 38 per cent. of the water utility revenue, the schedule is discr minatory as against private consumers and an increase in hydrant rental and a corresponding reduction in the commercial rates must be made." *City of Ripon v. Ripon Lt. and Water Co., 1910*, 5. W. R. C. R., 1, 68, 77, 819.

"If consumers on new extensions are made to pay not only the same proportion of the total operating expenses, including the returns on the investments in the plant, as that which is paid by existing customers in the same class, and in addition to this are also charged with the interest and depreciation on the new extension, their payment will obviously be greater than the payments of those who are not on the new extension. When those on the new extension are so few that the cost of serving them is relatively

With respect to service, the Commission has put into effect a series of rules regulating utility services. The rules relating to gas and electric service prescribe certain standards for gas pressure, quality of the gas, voltage, care of the lamps, lamp renewal, records of complaint, disturbance in the service, etc. A full and complete administration of this feature of the Commission's work will ultimately require a considerable inspectional staff. The results of these inspections show the widest variations in the character of the service and many conspicuous failures to provide anything like what may be characterized as adequate service.[1] In illustration of

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greater than the cost of serving those who are not on the extension, then it is undoubtedly fair that the former should be required to meet at least a considerable part of the extra cost. But when the consumers on the new extension are so numerous as to make it reasonably compensatory, then any extra charges, such as those described, or any charge above the regular schedule rates which apply to all consumers in the same class, would appear to be unjust and discriminatory." *Beloit Water, Gas and El. Co. v. City of Beloit, 1910*, 5 W. R. C. R., 617, 623, 820.

"Flat rates are, under normal conditions, indefensible in that they do not follow the cost analysis, and they encourage gross extravagance to the great increase of the variable expense of operation without a corresponding income." *City of Ripon v. Ripon Lt. and Water Co., 1910*, 5 W. R. C. R., 1, 34, 864.—THE EDITOR.

[1] The following excerpts are suggestive as to the Commission's service standards:

"Complaint was made that the electric service of the Ripon Light and Water Co. was inadequate. The record of inspection shows that the voltage regulation is satisfactory and that conditions in general, during the period of operation, are not open to serious objection. Dissatisfaction is found with the fact that the plant is operated only from dusk to midnight, making it necessary for customers to be equipped with other means of illumination. For some time there has been a tendency among even the smaller plants of the state to increase the hours of operation daily, and more par-

this, reference may be made to the above-mentioned decision of the Commission in the matter of standards for gas and electric service in the state of Wisconsin in which

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ticularly to give service during the morning hours, where the use of current will not warrant all-night service, and this improvement should be made as soon as possible." *City of Ripon v. Ripon Lt. and Water Co., 1910*, 5 W. R. C. R., 1, 87, 823.

"Complaint was made that the public and private lighting service furnished by the Kaukauna Gas, Electric Light and Power Co. in the city of Kaukauna, Wis., is inadequate; that the variations in voltage for both arc and incandescent lights are in excess of 17 per cent.; that the respondent frequently failed to furnish current for lighting purposes, leaving the city in total darkness; that the condition of the distribution system is such as to be hazardous to life and property. The contract of respondent with the city for the lighting of streets and public buildiugs having expired, such service is now furnished on an agreement from month to month and respondent refuses to do reconstruction work until the city has entered into a new lighting contract. *Held*, that the distribution system of respondent is wholly inadequate and requires reconstruction; that the power plant is in little better condition than the distribution system, it being in part obsolete and lacking many appliances necessary for rendering good service; that the service rendered by the respondent has not only been inadequate, but much of the time intolerable; that the public is entitled to rea on ble service, and that neglect or failure to furnish the same is not excusable on the ground that the city refuses to enter into a new contract with respondent for street lighting; that if the city chooses not to increase the number of street lights, respondent need only to provide for the existing demand for service and the natural increase thereof; that the consumer cannot be required to endure poor service any longer than is absolutely necessary to complete the work of reconstruction and repair required to make the plant efficient. Respondent is ordered to make such necessary additions, alterations and repairs within ninety days, and to observe and comply with the standards and rules established by the Commission by its order of July 24, 1908." *City of Kaukauna v. Kaukauna Gas, El. Lt. and Power Co., 1901*, 5 W. R. C. R., 695, 703–704, 823.—THE EDITOR.

tables are presented which show the results of the preliminary tests.

All orders of the Commission are subject to appeal. Such appeal is taken first to the Circuit Court and then to the Supreme Court. The law provides that the record before the Commission shall be the record before the court, and, if new testimony should be introduced before the court, through such introduction and determination of the fact that it is new testimony, a case is thrown automatically back before the Commission for revision of the original determination on the basis of the new testimony.

One of the three railroad cases, above referred to, was finally determined by the Supreme Court of Wisconsin in an epoch-making decision handed down in June, 1908. This decision discusses the order of the Commission under review: it analyzes and interprets the salient provisions of the statute creating the Commission; it meets in the broadest and most progressive manner the arguments relating to constitutional limitations and the allegations regarding the exercise of legislative power by the commission; it brings into clear perspective the rights of the companies as well as of the public; and, in substance, it declares that, even though on the given facts the court might decide a case differently from what the Commission does, if no errors of law have been committed, and the question is one regarding which reasonable and competent men might differ, the court will not set aside the order of the Commission. In other words, the court may feel that the Commission should have rendered an opposite decision, yet, within the limits of the law and discretion of the Commission, it will sustain that decision.

So far as I know, this decision stands practically alone

in this country in the breadth of the views expressed with respect to the regulation of the public utilities and the extent of the support it gives to the administrative authority charged with that regulation. There were two concurring and one dissenting opinion.

Generally speaking, the information collected by the Commission and the service performed by it and its staff have tended to make the office of the Commission a clearing-house between the public and private plants and municipalities. While the law expressly retains to the municipalities power to control the various kinds and character of service rendered and to be rendered, the power to prescribe conditions under which streets are to be used, extensions made, etc., an appeal lies in all such cases to the Commission whether a municipal or private plant is involved. It has been the endeavor of the Commission to coöperate with local authorities and the companies along these lines. The law has been in effect since July 9, 1907, and there now exists a steady increase in the lines of communication between the local managements of private and municipal plants and city and village authorities and the Commission. The information which has been collected and compiled by the Commission is placed at the disposition of all citizens of the state in the most convenient form. The use of this information by local authorities and citizens has, in a number of instances, obviated the necessity of making complaints. In other instances, it has led to changes in the plant equipment and service. Various lines of coöperation between the Commission and municipalities are discussed in a paper before the Wisconsin Municipal League in September, 1908, to which reference may here be made.

In addition to reasonable rates and reasonably adequate service, among the results which the operation of

the law has already shown and which the future may be expected to bring into evidence still more, may be mentioned the following:

1. The Wisconsin legislation has taken the utilities, as well as the railroads, out of politics. I do not believe that many citizens can be found in the state of Wisconsin who would seriously claim that, in either the primary campaign or in the campaign preceding the present November elections, the utilities, as such, had entered into politics. All students of municipal affairs well know that in this elimination of politics from the management of the utilities we have removed one of the greatest and most persistent sources of corruption and bad government.

2. The utilities law tends to eliminate feuds between the citizens and the managements of public and private plants. The law assures to all communities good service at reasonable rates. This is placed within the reach of all impartially, whether the Commission advances or lowers the rate. The basis of its findings is published in every instance. These published facts should suffice to convince, and I believe do convince, the average citizen of the reasonableness and justice of the decision, if it is reasonable and just, and whether he likes it or not, he must abide by that decision. In this respect, cases affecting utilities are quite different from most of the cases affecting railroads. In the case of utilities the controversy frequently degenerates into a bitter and partisan feud, affecting the entire population, which blinds both sides to a proper comprehension of the facts and to a sense of justice. Proceedings before the Commission tend to clarify and educate public opinion.

3. The public utilities law raises the standard of morality through the eradication of the evil of discrimina-

tion, and the protection of a reasonable rate. To those who are quite familiar with the past evils of discrimination in railway rates, the extent of the discriminations in the rates and service of utilities may be almost beyond comprehension. The whole state of Wisconsin was literally streaked and plastered with discrimination in the rates of utilities, and in all the rest of the country, where the extent of such discriminations have not yet been determined, as they have been in Wisconsin, it is quite probable that discriminations similar in character and extent likewise exist. All rates, rules, and regulations in effect in the state are on file with the Commission, and these are the only rates and regulations which can be lawfully enforced and collected. Free and reduced rate service has been absolutely prohibited. Thousands of individuals had been receiving free and reduced rate service, and the eradication of all such rates cannot help but serve as a moral tonic and raise the level of public and private morality within the state as a whole. The accompanying table illustrates discriminations in the telephone business existing shortly before the Commission's order formally abrogating all such rates went into effect. For thirty-two of the reporting companies, 8 out of every 100 subscribers received free or reduced rate service. The process of equalization of rates had been going on for over a year. Consequently, the actual extent of the unjust discriminations was doubtless very much greater at the time of the enactment of the law. In the following table the numbers given under each of the rates represent the number of subscribers enjoying the respective discriminatory rates. I have every reason to believe that in every other state of the Union these discriminations still flourish at the expense of subscribers who pay full rates.

4. The utilities law is working a revolution in business management. While some managements are doubtless models from a business point of view, they are not the general rule. Many of the utilities companies have not been operated on a business basis; in fact, it is probable that a good many of the managements did not have the remotest idea as to the exact standing, from a business point of view, of the plant they were operating. Uniform accounting and rules governing the service and the regulation of rates, compel the adoption of business and scientific methods. This is resulting in nothing short of a revolution in management.

5. All of the effects of the law, taken collectively, are bound to place investments in public utility enterprises on a more stable foundation.[1] The law works both ways.

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[1] As to the safety of public utility investments, the Commission in its decisions has said:

"It is one of the purposes of the Public Convenience and Necessity Law to insure the public against the undertaking of unusually hazardous enterprises. It was doubtless contemplated to prevent the projection of lines for speculative purposes and through which the innocent purchaser would be made to suffer losses." *In re Appl. Milwaukee and Fox River Valley R. Co., 1910,* 5 W. R. C. R. 466, 473, 810.

"The effect of the Public Utilities Law, the laws which restrict the issuance of security, and other similar legislation is to eliminate speculative elements from the business of operating utilities of this kind and to increase the safety of investments therein. Such legislation appears to stand for restrictions upon possible speculative gains on the one hand, and greater security on the other. Its aims are to maintain just and equitable relations as between investors and consumers. A policy of which this can be said, in so far as it affects enterprises which bear such a peculiar relation to the public as is the case of public utilities, appears to us to be both wise and necessary." *State Journal Printing Co. et al. v. Madison Gas and Electric Co., 1910,* 4 W. R. C. R., 501, 632, 834.

"Investors in public utilities may find that under the

On the one hand, it protects the consumer against unjust and unreasonable rates and poor service, and on the other it protects the investor in his claim to a reasonable rate on the property which is devoted to public use. This legislation will probably remove public utility investments very greatly, if not entirely, from the field of speculation and place them in a class of conservative, certain and stable investments.

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public utilities laws of the state their interests are as well, if not better, safeguarded than they were before these laws were enacted. To be relieved from active competition, and assured of reasonable returns upon the investment, as well as a reasonable price in case the plants are taken over by the municipality, are matters that deserve attention and that in the long run ought to attract rather than repel investments in such utilities. This would certainly seem to be the case as soon as it was found that the policy thus adopted by the state bids fair to become permanent and to be carried out in good faith." *State Journal Printing Co. et al. v. Madison Gas and Electric Co., 1910*, 4 W. R. C. R., 501, 632, 833.—THE EDITOR.

CHAPTER XVIII

THE PUBLIC SERVICE COMMISSIONS OF NEW YORK

(1) PUBLIC UTILITY LAW OF NEW YORK

The following is a complete revision of a paper read before the National Municipal League at its Pittsburg Meeting (1908), by Hon. Thomas M. Osborne, then a member of the Commission for the Second District. It has been revised and brought up-to-date by George R. Grant for the Second District, and Dr. Robert H. Whitten for the First District.

The New York Public Service Commissions Law was passed by the Legislature in 1907. Two years and a half under the law had shown certain defects. It was, therefore, revised and amended by chapter 480 of the Laws of 1910, which is chapter 48 of the Consolidated Laws. It was further amended by chapter 673 of the Laws of 1910 relating solely to telegraph and telephone corporations. The amendments to the law enacted by the Legislature of 1911 are not numerous and are embraced in chapters 124, 546, and 788 of the Laws of 1911, and deal respectively with the issuance of free passes or franks by telephone and telegraph companies, rates for transportation charged by railroad corporations, and the holding of securities by street railroad and electrical corporations.

The Public Service Commissions Law deals with the operation of common carriers by rail, which includes railroads, street surface railroads, express companies, and sleeping car companies; corporations operating telephone and telegraph lines; corporations supplying gas and electricity for such commercial uses as light, heat and power.

The law has six articles. As amended to date, the salient provisions of these articles are:

Article 1. By this article the state is divided into two districts and provision made for a commission in each district. The first district includes what is known as Greater New York, namely, the four counties of New York, Kings, Queens and Richmond; the second district includes all the other counties of the state. Provision is also made in the law for the appointment by the governor of ten commissioners, five for each district, subject to the approval of the Senate. They must have no official relation to any corporation subject to the provisions of the act, nor own stocks or bonds therein, neither shall they ask the appointment of any person to office by any of such corporations or receive from any such corporation favors in the nature of passes, franks or special concessions.

Each commission appoints its own counsel, secretary and other assistants. Each commissioner has full power to hold investigations and hearings, but orders result only by the action of a majority of the members. The Commission is not bound by technical rules of procedure or by evidence, but is free to obtain the facts in the quickest and simplest way possible. The Commission has power to compel the attendance of witnesses.[1]

[1] Failure to respond to a subpoena for such attendance constitutes a misdemeanor. No person shall be excused from testifying

After an order has been made by the Commission, any corporation or person interested shall have the right to apply for a rehearing in respect to any matter determined upon. If such rehearing is denied, application may then be made to the supreme court for a writ of certiorari to review the proceedings of the Commission. The Commission can commence action to recover penalties or forfeitures, or to enforce its orders. These actions may be brought in any court of competent jurisdiction of this state.

Article 2. Article 2 describes the duties of common carriers, which term includes "all railroad corporations, street railroad corporations, express companies, car companies, sleeping car companies, freight companies, freight line companies and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property." The Commission has interpreted this section as limiting its jurisdiction over carriers to such as operate by rail.

Common carriers shall furnish to the public "such service and facilities as shall be safe and adequate and in all respects just and reasonable," and "all charges made or demanded shall be just and reasonable and not more than allowed by law or by order of the Commission." They shall provide proper switch and side track

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or from producing any books or papers in any investigation or inquiry by or upon any hearing before a commission or any commissioner, when ordered to do so by the commission, upon the ground that the testimony or evidence, books or documents required may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be punished or subjected to any penalty or forfeiture on account of any matter concerning which he shall have testified. No person shall, however, be exempted from prosecution or punishment for any perjury committed by him in his testimony.

connections and shall keep on file and keep open "for public inspection schedules showing the rates of fare and charges for the transportation of passengers and property."

There shall be no special rate, rebate or unjust discrimination of any kind, nor shall there be issued any free ticket, free pass or free transportation for passengers or property, exception being made in favor of officers and employees of the company in question and certain other classes of individuals, including representatives of charitable institutions.[1]

Article 3. This article contains further provisions relating to common carriers and deals especially with the powers of the Commission for carrying into effect the provisions of article 2. Power is given to the Commission (a) to examine into the general conditions relative to capitalization, franchises and management of all common carriers under its jurisdiction; (b) to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision and to compel their production if necessary; (c) to require annual reports from corporations and to prescribe the form of the same; (d) to investigate or make inquiry as to any act done or omitted to be done in violation of the law or of an order of the Commission; (e) to make regulations relative to rates and service; (f) to order repairs, changes, improvements and additions in track, switches or any other property or device in the interest

[1] There must be sufficient and suitable cars for freight in carload lots, and sufficient cars and motive power on railroads and street railroads to meet all of the requirements for the transportation of passengers and property. The law expressly gives the commission power to make suitable regulations for the furnishing and distribution of freight cars and for demurrage charges.

of better service; (g) to order changes in time schedules—to increase number of trains, cars or motive power; (h) to establish a uniform system of accounts and prescribe the manner in which they shall be kept.

Without the approval of the Commission no railroad corporation under its jurisdiction shall (a) commence the construction of any railroad, street railroad or extension of existing lines; (b) purchase the whole or any of the capital stock of any railroad corporation; (c) sell, transfer or lease any franchise to operate a railroad; (d) issue any stock, bonds, notes or other evidence of indebtedness except notes payable within twelve months; (e) merge or consolidate with any other like corporation.

The law gives to the Commission ample power to enforce all of its orders and regulations. Each day's violation of an order constitutes a separate offence, for which a separate action to recover a penalty may be instituted if the Commission sees fit to so act. Every individual who aids or abets any violation of an order of the Commission and who fails to obey and comply with any such order shall be guilty of a misdemeanor. The Commission can also enforce its orders by mandamus or injunction.

Article 4. This article, which contains provisions relating to gas and electrical corporations similar to those hereinbefore mentioned in connection with carriers, was freely amended in 1910. In the original act of 1907 the provisions of the act of 1905, in relation to the supervision of gas and electric light and power corporations, had been inserted without adequate revision to conform them in all respects to the higher standards of control established in the Public Service Commissions Law for railroads and street railways. Accordingly the provisions requiring safe and adequate service at just and

reasonable charges, and prohibiting discriminations and preferences which were already in the law affecting railroads, were extended to gas and electric companies. Under a section entitled " General powers of commissions in respect to gas and electricity," the Commission may investigate from time to time the quality of gas supplied, examine and investigate the methods of manufacture and distribution and order such improvements as may seem necessary, fix standards for the measurement of the purity or illuminating power of gas, and require all such corporations, including municipalities, furnishing gas and electricity to file annual reports. The article also gives power to inspect gas and electric meters.

No gas corporation or electric corporation shall begin construction of gas or electric plants, nor shall it exercise any rights or privileges under any franchise, without first having obtained the permission and approval of the commission.

With reference to the issuance of stocks, bonds and other forms of indebtedness and the transfer of franchises and property, the sections regulating gas and electrical corporations are similar to those regulating common carriers. For the enforcement of its orders and regulations directed to such corporations the Commission has powers similar to those which it exercises over common carriers, as previously stated.

Article 5. The most important provisions of this article are those incorporated in it in 1910 by a separate act placing telegraph and telephone companies operating property within the State of New York in the public service in a value not less than $10,000, under the jurisdiction of the Public Service Commission for the Second District (Laws of 1910, chapter 673). Attempts had been made both in 1908 and 1909 to secure the passage

of an act of this kind, but the bills had failed of passage. As the telephone business of the state is largely under the control of one company, and this company operates both within New York City and throughout the rest of the state, it was thought best that the business be subjected to the control of a single commission. The law applies the same provisions and the same general terms as to capitalization, franchises, equipment, buildings, plants, devices, etc., to telegraphs and telephones that had already been applied to other public utilities. They are required to give safe and adequate service at just and reasonable rates, and discriminations and unjust preferences are prohibited. Rate schedules must be filed for public inspection and may not be changed except after thirty days' notice to the Commission. The Commission may make investigations, require reports, establish a uniform system of accounts, and fix rates and standards of service.

Telegraph or telephone corporations may not issue stocks, bonds or other evidences of indebtedness for periods of more than twelve months without the consent and approval of this commission. Nor can their franchises be transferred without the Commission's consent. The Commission has power to enforce its orders against these corporations by forfeitures or penalties and can commence summary proceedings in the courts in like manner as against the other classes of corporations heretofore named.

Article 6. This article abolishes the former Board of Railroad Commissioners, the Commission of Gas and Electricity, the State Inspection of Gas Meters, and the New York City Rapid Transit Commission.

Such are the main provisions of the law as it now stands. Certain provisions of the amendments of 1910

are worthy of special emphasis. In certain important instances the courts placed an interpretation on the act that reduced and weakened the powers that it was intended that the Commission should exercise and which were essential to the successful operation of the law. For example, one of the main purposes of the law was supposed to be the prevention of stock watering. The court held that the words used in the section relating to this subject only required the Commissions to determine whether the stocks and bonds sought to be issued came within one of the four purposes stated in the section, i. e., the acquisition of property, construction of facilities, improvements and maintenance of service, and the discharge or refunding of obligations. (See People ex rel Delaware and Hudson River Railroad Company vs. Stevens, 134 Appellate Division 99, Affirmed in 197, N. Y. 1.) It was thought that this construction of the words used in the act deprived the Commissions of power to prevent stock watering in that it would be easy for the companies to bring within the four legal purposes sums that never should be capitalized, such as, for instance, expenses of operation and replacements. Amendments of 1910 were intended to correct this possibility. A more recent decision, however, holds that, even under the law before the 1910 amendments, the Commissions had no power to approve securities issued for operating expenses or replacements. (People ex rel Binghamton L. H. & P. Co. vs. Stevens, decided by the New York Court of Appeals, October 3, 1911.) Nevertheless, the power of the commissions to effectively control the issue of stocks and bonds upon the *reorganization* of a company is still in doubt, the Appellate Division of the Supreme Court having decided against the right of the Commission to exercise such control. An appeal has been taken to

the Court of Appeals, but has not yet been decided. The amendments also give the Commission power to ascertain the proper portion of expenses, capitalization, earnings and debts in the case of corporations having an interest in but no direct connection with a subsidiary business not under the control of the commissions. Amendments of 1910 were intended also to make more clear and effective the authority of the Commission to prescribe reasonable joint rates, including transfers on street railroads. The interchange of transfers may be required except in the case of a transfer between a rapid transit line and a surface line.

(2) THE NEW YORK PUBLIC SERVICE COMMISSION FOR THE SECOND DISTRICT

On July 1, 1911, the Public Service Commission for the Second District of New York completed four years of its work in administering for the counties outside of Greater New York the Public Service Commissions Law which Governor Hughes was instrumental in placing upon the statute books. Ample time has therefore elapsed to enable public opinion to determine whether or not the Legislature of 1907 acted wisely in its enactment of the statute which placed in the hands of two commissions regulating powers over public utilities. The Second District Commission has had to deal with a multiplicity of problems. The following, written especially for this volume by George R. Grant, Assistant Secretary of the Public Service Commission for the Second District, will serve to indicate that, both from the standpoint of the individual and the corporation, the Commission has more than justified its existence by affording a tribunal

where interests, large and small, can adjust their difficulties:

At the outset it can be stated emphatically that the Commission in its regulation of the public service corporations under its jurisdiction has not been influenced or swayed by any considerations other than the merits of the cases in which it has been called upon to administer the law. It is a quasi-judicial body which has come to be looked upon by the public as divorced from politics and all political affiliation. Some of the commissioners are members of one political party and some of another, but differences of opinion as to what the Commission's policy should be upon any question has never been due to any difference in political views.

The "high finance" manipulation of the traction properties and the consequent failure of the corporations to give adequate service to the city of New York furnished work for the First District Commission. Throughout the territory embraced in the jurisdiction of the Second District Commission, however, the grievance of the people has not been so much against financial management of public service corporations as against the wanton disregard of the duties which these corporations owed to the people and the ignoring of protests and complaints. Many of these complaints never reached the heads of the corporations involved. Subordinate officials thought it their duty to refuse requests from patrons rather than to grant concessions. Failure to recognize the importance of coöperation with the public and an indisposition to remove the causes of complaints have been matters which the Commission has been obliged to cope with during the first four years of its work.

The Commission of the Second District exercises ju-

risdiction over public service corporations throughout a territory which has a population of nearly five million people. Within that territory the Commission possesses regulating powers over 1,008 corporations. Of this number there are 199 steam railroad corporations, 133 electric railroad corporations, 7 express corporations, 310 electrical corporations, 198 gas corporations, 160 telephone and telegraph corporations, and one sleeping car company. The regulation of telegraph and telephone companies became a function of the Commission for the Second District only, by virtue of chapter 673 of the Laws of 1910. The 160 telegraph and telephone corporations do not include any which are operating property, for the transmission of messages, of a value less than $10,000. The railroad corporations have a capitalization of about two billions of dollars, the electrical and gas corporations five hundred million dollars, and the telegraph and telephone corporations eight hundred million dollars.

With the great powers which the Commission possesses the question naturally arises, has the public availed itself of this tribunal? In answer, it may be said that during the past four years 7,950 matters of sufficient importance to warrant a separate filing have been received in addition to numberless inconsequential communications from individuals who have mistaken the purposes for which the Commission was organized and considered it the panacea for all evils of mankind.

In dealing with complaints the Commission has endeavored, first of all, to adjust them in an informal way, and this policy has been productive of great good; 5,397 matters have been amicably arranged without the necessity of formal orders or the expenditure of one cent by the complainants. Cases are made formal only when it

becomes impossible for the contesting parties to arrive at an adjustment mutually satisfactory. The records show many examples of informal action, prompt and effective, in cases where formal proceedings would have resulted in a delay disastrous to the individuals who sought assistance. The following is a characteristic telegram:

> Want fruit growers' refrigerator car, ordered Monday, apples in barn, weather cold. Can you get one there tomorrow morning? Answer.

The Commission called the proper traffic official of the railroad company on the telephone and very soon received advice from the company that it would place a car immediately. This information was transmitted to the complainant and the case was closed within five hours. Many instances of this nature can be recited, but one is sufficient to give an idea of the manner in which such conditions have been met.

When the Commission took office the complaints concerning delays of freight were general throughout the state. The Buffalo freight yards in particular were known as "freight graveyards." Loaded cars were detained at that point for days, and sometimes for weeks. Soon the freight in the Buffalo yards commenced to move, and for the past years the appellation of "freight graveyards" has not been applicable to Buffalo.

The Commission has established a system of reparation in connection with freight charges. The law requires every carrier to file a schedule of the rates which it imposes for the transportation of all commodities in carload lots or otherwise. The rate so filed must be the rate charged to all patrons alike. In the event that

a carrier imposes a charge in excess of its published rate, it becomes the duty of that carrier to return to the shipper the difference between the amount specified in the tariff and the amount which it has exacted. Upon application for permission to make a reparation the Commission issues an order which prescribes the amount to be returned by the carrier.

Rebating in all forms and discriminatory practices have been made impossible through the administration of the law. The Commission, working through a well organized and efficient tariff bureau, keeps in weekly communication with chambers of commerce and business men's associations throughout the state, as well as hundreds of shippers, furnishing to them and to the press a bulletin showing every change in transportation rates during the week.

After considering the best methods of handling the vast amount of detail work connected with the complaints and petitions which commenced to pour in from all sides immediately upon the taking effect of the law in 1907, the Commission adopted a plan of organization in accordance with which it established a division, with an expert at its head, to handle the work in connection with each class of corporations mentioned in the law. Thus it established the Division of Tariffs, to which reference has already been made, the Division of Light, Heat and Power, Statistics and Accounts, Engineering and Inspection, and, in 1910, the Division of Telegraphs and Telephones. Within the last week it has established a new division known as the Division of Capitalization.

The service which the Commission has rendered and is constantly performing for the benefit of consumers of gas and electricity is of great importance. The inspectors of the Division of Light, Heat and Power go

about the state and, unannounced, drop into the offices of the gas companies to test the purity and quality of the product. It can fairly be said that this work has resulted in the bettering of service in every community in the state. In localities where complaints have been general, experts have gone into the whole subject of manufacture and distribution, and in numerous instances radical changes in apparatus and methods of manufacture have resulted.

Every gas meter that now goes into the house of a consumer is first tested by a representative of the commission. Inspections are constantly going on upon complaints. If a meter is found to be fast, the fee which the state charged for inspection is refunded to the complainant by the company against which the complaint was entered.

The Division of Light, Heat and Power is in close touch with the operations of electrical corporations, and the law applicable to the electrical service is administered in much the same manner as has been explained in connection with gas.

The Commission is a clearing house for the adjustment of difficulties between the consumers of gas and electricity and the corporations supplying the service. These disputes cover a wide range of subjects, including alleged unjust charges, dangerous conditions of plants and distributing systems, and refusals on the part of companies to extend mains. Whenever possible, these matters are adjusted by correspondence, and are advanced to public hearings only after it becomes apparent that results cannot be produced informally.

The heads of public service corporations have, in most instances, come to realize that the law as it has been administered during the past four years has resulted

in great good to their companies. Striking examples of this have been refusals of the Commission to allow new corporations to enter fields of existing companies in localities already well served, or in localities where the service, although not what it should be, could be raised to the proper standard of efficiency.

A new corporation desired to exercise a franchise which it had obtained from a western New York city and to furnish electricity therein for light, heat and power. The service which the existing company afforded was not the best and the rates for such service were too high. The Commission gave to the established company an opportunity to improve its service and to decrease its rates before entering a determination upon the petition of the new corporation. The result was that the city in question obtained a reduction for its street lighting from $65 to $52 per lamp, the individual users of power received better service, and the new corporation did not enter the field, which was not sufficient to support two companies. This action, therefore, improved the service, reduced the rates, and probably avoided two receiverships.

The requirements with reference to a uniform system of accounts have brought about a condition of utmost value to the public. Through the accounting system of a corporation may be seen the results of operation. After a complete study of all the conditions, the Commission ordered a uniform system of accounts based on fundamental principles of economics applied to corporation accounting. It makes provision for depreciation. It provides that discount on securities shall not be capitalized, but paid from earnings; that betterments and improvements shall not be included in operating expenses, but must either be charged to capital or directly to in-

come. The order provides that entries on books shall be definite and plain and permits of double entry bookkeeping only. The books and accounts of the corporations thus kept will indicate the true state of affairs to the benefit of the public which has granted the franchises and the investors whose money is in the business.

The Division of Engineering and Inspection is especially well equipped. The men who are carrying out the Commission's policies in connection with railroad operation, equipment and right of way conditions, have received their training in the practical school of experience. Every mile of steam and electric railroad in the state is thoroughly inspected each year and such repairs and improvements directed as may seem feasible from time to time in the interest of public convenience, comfort and safety. The supervision of locomotives and safety appliances is careful and minute, and the inspection of locomotive boilers by high-class mechanical experts adds greatly to the safety of employees and the public generally. Every railroad accident of consequence is investigated, and when it appears that such accident was caused by defective equipment, roadbed conditions, or methods of operation, orders are issued promptly, intended to prevent a repetition of the occurrence.

Soon after its organization the Commission received many complaints concerning irregular and unreliable schedules of passenger trains. After an exhaustive investigation a system of train delay reports was adopted. Every train arriving at a division terminal five minutes or more late must be reported, together with the cause of delay. Each month the record is tabulated and published. The result of this practice has been most gratifying. Under this system many divisions have shown a record of every train on time. The Erie Railroad Com-

pany had published in its time tables pages of jokes made at the expense of the company because of chronic lateness of trains. The first monthly record showed that the Erie was in the "70 per cent. on time" class. Since then the record shows that it has frequently operated during monthly periods 96 per cent. of its trains on time. The percentage of passenger trains on time in this state has increased from 77 per cent. to 92 per cent.

The Commission, through its Division of Engineering and Inspection, made a careful examination into the cause of fires in the State Forest Reserve, and as a result ordered all steam railroads operating through the Adirondacks to use oil-burning locomotives. This was the first step taken by any state in the East for the protection of forests from fires caused by sparks from coal-burning engines.

The following are some added results of the Commission's work in connection with carriers. Freight and passenger service has been improved, trains which had been discontinued have been restored, more trains have been ordered to stop at certain stations, excessive or illegal charges for transportation have been discontinued, grade crossings have been eliminated, vestibules have been placed on street cars for the benefit of employees, station facilities have been improved, and new stations have been built. Many of these results have been produced by suggestion to the companies. In other instances formal orders were necessary. The Commission has power to enforce its orders by penalty actions, but has been very cautious upon the question of penalties, and has never started to recover a penalty against a corporation except under the most extreme circumstances.

A certain railroad corporation was directed to erect a new station. The time for the completion of the build-

ing arrived and absolutely nothing had been done. An action was commenced to recover the penalty provided by law. The railroad company immediately evidenced a great desire to carry out the order of the Commission and agreed to build the station within a reasonable time and, in addition, to expend $5,000, the minimum penalty provided by the statute, in improving roadbed and track conditions in the immediate vicinity. This proposal was accepted and thus the company expended the amount of the penalty upon its own property and the public received the benefit.

The people of the state are not insensible of the improved conditions which prevail by reason of the present method of state supervision of public utilities. A minister in a northern New York hamlet who saw thousands of cars of coal being hauled through to Canada while his people were unable to obtain a single car until an appeal was made to the Commission, wrote that such results show "a radical improvement in the administration of the State of New York." A resident of a Hudson River town who had been rebuffed in a just request by an express company and who subsequently secured satisfaction through the Commission, stated that he was "dazed by the prompt way the matter was handled, and the readiness with which the company yielded when brought to account." A high-class passenger train on one of the large railroads failed to maintain its schedule for a considerable period of time. This matter was brought to the attention of the Commission upon complaint and an investigation of the service afforded by the train in question was made. Some time after, the complainant addressed the Commission and reported satisfactory conditions, stating, "The regular passengers and the general public have reason to be much pleased

with the improvement that has been made in the running of this train, and the Commission's efforts in their behalf are appreciated by all who know the reason for the improvement."

The Railroad Law of this state provides that all steam surface railroads hereafter built must be so constructed as to avoid all public crossings at grade wherever practical so to do. The law gives the Commission power to determine whether or not such crossings shall be made over, under, or at grade. Whenever a new street is constructed across an existing railroad, the railroad company must pay one half, and the municipal corporation wherein the street, avenue, or highway is located, the remaining one half of the expense of making the crossing above or below grade. Whenever a change is made as to an existing crossing from grade to an over or under crossing, fifty per cent. of the expense must be borne by the railroad corporation, twenty-five per cent. by the municipal corporation, and twenty-five per cent. by the state. All grade crossings are dangerous. Some are much more dangerous than others. The amount of money which the legislature appropriates each year for the state's share of the expense of grade crossing elimination is very far from being sufficient to permit of extensive work in this direction. The Commission has endeavored, therefore, to select each year for elimination the crossings at grades which have proved most dangerous to human life, with due regard to an equitable distribution throughout the state. This year the legislature appropriated for use by the Second District Commission in this work, $350,000. This means that grade crossing elimination work to the extent of $1,400,000 can be carried on during the year. The Commission has selected twenty-one crossings in various parts

of the state where this money will be expended, and where, it is hoped, it will prevent loss of life.

About 60 per cent. of the complaints handled by the Commission during the past four years have been directed against the operations or facilities of carriers by rail. This includes railroad and street railroad corporations, express and parlor car companies. There is no separate division in the organization of the Commission charged solely with the handling of the correspondence and other procedure involved in the transaction of this business. The secretary, the chief executive officer of the Commission, has direct charge of this branch of the work, and, when we consider the proportion which the number of complaints against carriers bears to the total number of complaints handled by the Commission, and consider further that the secretary supervises the scheduling of all hearings, speaks for the Commission through the public press, and is in touch with all inter-division transactions, the statement that he is a very busy man requires no proof.

The regulation of telegraph and telephone corporations operating property in the public service to the amount of $10,000 is carried on by the Commission in a manner very similar to that which has already been described in connection with other classes of public service corporations. Complaints, both formal and informal, are entertained in matters pertaining to rates and service. Although the Division of Telegraphs and Telephones is new, the Commission has received many expressions of approval with reference to its work from people who have felt the benefit of the administration of this branch of the law. A recent complainant who obtained relief through the Commission, after stating that a certain connection which he had hitherto been unable to obtain

had now been made for him, concluded his letter as follows: "Thank goodness, there is a place where common sense, fairness and justice rule."

Complaint was made to the Commission soon after the establishment of the division that the rates between the Borough of Manhattan and the Borough of Brooklyn, New York City, were excessive. After a very careful consideration of all the facts and circumstances concerning the telephone business as conducted by the New York Telephone Company in the City of New York, the Commission entered an order reducing the Interborough charge from ten to five cents. The expressions of satisfaction which were received subsequent to this decision from citizens of both boroughs were many and sincere. The law which gives the Commission authority to regulate these companies is not adequate in all respects. It is, however, a beginning and it is hoped that future legislation will bring it up to the standard of those sections which deal with common carriers, gas, and electric companies.

Great as has been the beneficial results to the people and the corporations of those provisions of the law through which the Commission has acted upon operating problems, it is the opinion of those who realize the dependence of adequate service at reasonable rates upon proper methods of capitalization, that the power which the Commission has exercised over the issuance of stocks, bonds and other evidences of indebtedness has been productive of still greater good. All corporations subject to the supervision of the Commission must obtain the latter's approval to capitalize. Opponents of the Commission have gone far in their contentions that the operation of the law in this matter has stopped the development of railroad and lighting properties. The supervision of capitalization has had the one effect of enforcing sound

and honorable principles in corporate management. To say that such a policy is a menace to the integrity of corporate securities is as absurd as to say that the courts of justice, by enforcing the observation of law and order, have become a danger to civilization. If the Commission is to regulate corporations as to the service and rates it must of necessity control their capitalization. Rates, service and capitalization are so closely related that it is impossible to deal with one without a consideration of the effect upon the others. Excessive fixed charges caused by watered capitalization necessarily create a pressure upon the administrative officers to make everything subordinate to producing the money required to meet such charges. In its investigation of applications which have come before it, the Commission has found every possible form of manipulation.

A traction company of western New York, with a right of way five miles in length, applied to the Commission for authorization to issue $1,000,000 of bonds for the purpose of building its road. Investigation disclosed that the capital stock of the company had been issued to the amount of $1,000,000, notwithstanding the fact that there had been no expenditure of money for construction, that there had been paid upon this stock $5,000 in cash, and that the remainder of the stock had been issued to the president of the company as compensation for his service in procuring a franchise. It is needless to say that the Commission did not grant the application for bonds at once, and before such issue was authorized capital stock to the amount of $945,000 was surrendered and cancelled. A certain steam railroad corporation made application to the Commission for authorization to issue debentures in payment of an existing indebtedness to an amount of about $6,000,000. An examination of

the case disclosed that, of the moneys borrowed, more than $1,600,000 had been used in paying operating deficits for which the company proposed to issue its stock. A gas company made application to the Commission for authorization to issue bonds to the amount of $200,000 for the purpose of refunding outstanding bonds to that amount. An examination disclosed that a promoter had purchased the entire capital stock of the company and had issued bonds in the amount of $200,000 to himself and used a part of the proceeds in payment of the stock which he had purchased. Not one dollar of the proceeds of these bonds ever went into the treasury of the company. Before authorizing the issue of further securities, the Commission required the company to make such provision as would, in twenty years, wipe out the $200,000 of bonds.

The difference between two corporations, one capitalized on the basis of actual value and the other in accordance with the old order of doing business, is shown by a glance at the conditions of two western New York electric railroad properties. The railroad of one is twenty miles in length. It was constructed as a business enterprise upon a cash basis. It has its own power house, and handles its own power. The railroad of the other company is fifty-four miles in length. It was constructed from the proceeds of stock and bonds issued in a lump sum to a construction company. It has no power plant and purchases its power. It is now in the hands of a receiver. The first company is operating its own railroad. Its capitalization per mile is $30,000. The capitalization per mile of the second company is $147,278. The deficit of the second company for ten months was $85,315.57, while the first company had no deficit, and paid a 6 per cent. dividend. These figures speak for

themselves. One company is prosperous, able to render first-class service to the public, to pay its fixed charges, give a fair return to the stockholders, and still accumulate a surplus. The other company became absolutely bankrupt and was only able to continue operations through a reorganization.

A development has gone on under a wise administration of this portion of the law, the provisions of which apply equally to the capitalization of carriers, gas and electric corporations, and telegraph and telephone corporations. During the four years of its existence up to July 1, 1911, the Commission has authorized upwards of $500,000,000 of new and honest capitalization.

It is apparent that the administration of this law must at all times be entrusted to men of high character. It gives to the Commissioners greater regulating powers over corporations than has any previous statute in the history of the country. So long as the present high standard is maintained in the selection of Commissioners, the Public Service Commissions Law will continue to provide a forum where differences of opinion between the public and the corporations will find a speedy and inexpensive solution, where the vested rights of corporations will secure protection, and where attempts to direct false capitalization will receive an effective check. The value of such regulation as compared to inefficient special legislation needs no argument.

(3) THE WORK OF THE PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT, NEW YORK

Dr. Robert H. Whitten, Librarian-Statistician of the New York Public Service Commission for the First Dis-

trict, has written, especially for this volume, the following comprehensive discussion of the work and accomplishments of that Commission:

The jurisdiction of the Public Service Commission for the First District is limited, with a few minor exceptions, to territory comprised within the City of New York, thus including the four counties of New York, Queens, Kings and Richmond. The population in this district is about 5,000,000. It constitutes more than half of the population of New York State and its population is exceeded only by the population of the states of Pennsylvania and Illinois. The work of the Commissions for the two districts differs widely; first, on account of different powers vested by law, and, second, on account of the difference in the character of the two districts. The Commission for the First District deals with a very large population within a small area. The congested character of the district creates problems as to service, equipment, and methods of supervision that either do not exist at all or not with the same intensity throughout the rest of the state. The Commission for the First District deals with comparatively few corporations, most of them with large capital and output, while the Commission for the Second District deals with a very large number of corporations, most of them having a small capitalization and output. The Commission for the First District has been given the powers and duties with relation to the laying out and construction of rapid transit railroads which formerly devolved on the Board of Rapid Transit Railroad Commissioners. This enormous task has no counterpart in the work of the Commission for the Second District, or in that of Public Service Commissions of other states. On the other hand, the control of telephone and telegraph companies is entirely under the Commission for the Sec-

ond District and matters in relation to transportation of freight and express are also almost entirely under the supervision of that Commission. The accounts and finances of all the steam railroads of the state, with the exception of a short line on Staten Island, are exclusively under the jurisdiction of the Commission for the Second District. By far the larger proportion of the time and expenditures of the Commission for the First District is devoted to rapid transit planning and construction. Next in order comes the supervision of street and electric railroads, and next the supervision of gas and electrical corporations.

Organization and Expenditures.—The total expense of the Public Service Commission for the First District, except the salaries of the Commissioners, the Secretary, and the Counsel, amounting to $91,000, is paid by the City of New York. Estimates of moneys required are submitted to and approved by the Board of Estimate and Apportionment of New York City. A detailed statement of the expenses of the Commission, divided into departments for the year 1910, is as follows:

Executive Department	$179,660.85
Legal Department	49,905.62
Franchise Bureau	20,931.70
Bureau of Statistics and Accounts	25,550.07
Bureau of Gas and Electricity	39,893.23
Engineering Department	768,452.71
Transportation Department	123,616.39
	$1,208,010.57
Salaries of Commissioners, Secretary and Counsel paid by State	91,000.00
	$1,299,010.57

The greater proportion of the expenditures of the Commission are not, however, for the supervision of public service corporations, but for work connected with the planning and construction of rapid transit railroads, a work formerly performed by the Board of Rapid Transit Railroad Commissioners. Of the total expenditures in 1910, $377,000 was for public service regulation, and $922,000 for rapid transit work. The Commission has from 500 to 700 employees, depending on the amount of rapid transit work required. The rapid transit work proper normally engages the services of about 60 per cent. of the employees. The duties of the Commission in relation to rapid transit include the laying out of rapid transit routes, the preparation of plans, the securing of consents of property owners or the substituted consent of the court, the securing of bidders and the letting of contracts, and the entire engineering supervision of construction costing many millions of dollars.

Complaints.—A principal function of the Commission is to serve as a forum for the settlement of disputes between the individual and the public service corporation. The consumer must use the product of the monopoly whether he desires to or not, and it is, therefore, particularly aggravating, when a difference of opinion arises, to feel that there is no appeal from the arbitrary action of the officials representing the monopoly. The Commission furnishes the opportunity for a judicial hearing of all complaints. This opportunity lessens the otherwise galling effect incident to dealing with a monopoly. This is of great advantage to the company concerned, as it betters the relations between the company and its consumers. For the three years, 1908, 1909, and 1910, the Commission received and handled informally 5,207 complaints against transportation companies. In addition,

there have been handled an average of 500 informal complaints each year against gas and electric companies, other than complaints as to meters. For the year 1910 the Commission conducted sixty formal proceedings on its own motion, eleven formal proceedings on complaint, and thirty-six formal proceedings on applications of companies, making a total of 107 for the year. In the conduct of these proceedings 427 hearings were held.[1] The number of formal proceedings undertaken by the Commission has declined each year, as it is the Commission's policy, whenever possible, to settle complaints in

[1] A complaint, as soon as received, is sent to the company affected with a letter asking the company what measures it can take to satisfy the complaint. In many cases the company immediately concedes the point in question. In other cases the company explains why the request cannot be granted and its explanation is accepted by the complainant or is deemed by the Commission to be a satisfactory answer. In other matters, the Commission, through its Transportation Department, or its Bureau of Gas and Electricity, has an investigation made to determine whether the complaint is well grounded. Often the Commission's engineers or inspectors confer with the company's representatives for the purpose of bringing about an adjustment of matters complained of. As a result of these investigations, conferences, or correspondence, either an arrangement mutually satisfactory to the company and the complainant is arrived at or the Commission determines that there is no just cause for the complaint. In case the above informal procedure proves unsuccessful, a formal proceeding is begun. A complaint order, to which is attached a copy of the complaint, is served upon the company and the company is usually given ten days to answer. If the company's answer is deemed unsatisfactory, the Commission orders hearings upon the complaint. At these hearings the complainant, the company, and the experts of the Commission give evidence. Both parties and the Commission are represented by counsel. On the evidence submitted and the recommendations of the Commissioner in charge of the hearing, the Commission renders its decision.

an informal manner. There were 106 formal proceedings on complaints in 1908, thirty in 1909 and eleven in 1910. Formal proceedings under the decisions of the New York courts, upholding the right to review the proceedings of the Commission on a writ of certiorari, are necessarily very involved and much time is taken in getting into the record, in proper legal form, all of the facts upon which the decision must be based. If a matter can be settled in an informal manner, a great deal of time is saved to the complainant, to the company, and to the Commission. Moreover, a formal proceeding necessarily involves the establishment of precedents, and anything that tends to establish a precedent that may possibly at any future time work to the disadvantage of either party will necessarily be contested most vigorously. The proceeding is therefore greatly prolonged and the result is often less satisfactory to both parties than it might otherwise have been. At an informal conference each side yields or passes over unessential matters without fear of establishing bad precedents, and thus the conclusion reached is likely to be more satisfactorv to both sides than in a formal proceeding.

Transportation Department.—A large share of the regulatory work of the Commission is carried on through the Transportation Department. E. G. Connette, transportation engineer, is at the head of this department. The work of the department relates to the service and equipment of railroad and street railway companies and, in lesser degree, of gas and electric light companies. Files of freight tariffs, passenger rates, and time schedules are also maintained. The department has about seventy-five employees and is divided into four bureaus: Transit Inspection, Grade Crossing, Equipment Inspection, and Accident Bureaus.

Transit Inspection Bureau.—The work of the Transit Inspection Bureau relates chiefly to the securing of adequate service on the railroad and street railway lines. An electrical engineer is at the head of this bureau and he has under him about forty employees. There are four junior railway engineers and about thirty transit inspectors, including the supervising transit inspectors. The city is divided into four inspection districts with a supervising inspector in charge of a squad of transit inspectors for each district. From 150 to 200 investigations in relation to service are undertaken each month. About one-third of these investigations are made as a result of complaints received. Most of the investigations are, however, made on the initiative of the bureau with a view to seeing whether adequate service is being rendered in all parts of the city, whether orders previously issued are being complied with, and whether improvements promised by the companies are actually being carried out.

Experience seems to show that the only method by which the service on the various lines can be kept up to a reasonable standard is through constant observation by a large force of transit inspectors. Fluctuations in the amount and character of travel are so frequent and pronounced that adequate service can be enforced only by such constant and continuous inspection as will take note of all such fluctuations and, if necessary, bring the matter of increased service to the attention of the operating officials. It is only by keeping thoroughly and continuously informed concerning service conditions that the Commission can be in position to secure and maintain adequate service. This means the employment of enough transit inspectors to make frequent inspections and counts of traffic. This is just as essential to insure the public's getting what it is entitled to in the way of street

railway service as is an audit of accounts to insure the correctness of a treasurer's accounts.[1]

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[1] The number of passengers carried per car mile operated is sometimes used as an index of the quality of the service rendered. If the ratio of passengers to car miles increases upon a particular line, it is often an indication that the cars are becoming more crowded. Of course this is not necessarily the case. There may be an increased proportion of short rides or the traffic may be better distributed either as to location or time, and thus there may be a large increase in the ratio of passengers to car miles without any real increase in the crowding of the cars. Moreover, changes may be made in methods of operation so as to cut out useless car mileage and thus result in a decrease in the ratio without injury to the service rendered. In order to secure the data to compare this ratio from month to month and year to year, the Commission secures from the companies daily statistics of passengers transported and car miles operated. At the end of each month they are compiled on a single sheet so as to show for each company the number of passengers carried, car miles operated, and ratio of passengers to car miles, with a comparison for the same month of the preceding year. These statistics are furnished by most of the companies at the request of the Commission without formal order. In the case of the Interborough Rapid Transit Company, however, a special order was issued (Filing Order No. 1033, February 19, 1909, amended October 13, 1909). This order requires the company to file within seventy-two hours after the close of each day a daily statement of traffic showing, as nearly as may be the number of tickets sold and the number of car miles run on the subway division and on the Second, Third, Sixth, and Ninth Avenue elevated lines. The company is also required to file within twenty-five days of the close of each month a statement of the number of tickets sold at each station on each of the above routes. The other companies, with one or two unimportant exceptions, make the daily car mile and passenger report for the entire system and not by separate lines. In case, however, this information is desired for a particular time and line, it may usually be obtained on application to the company. By a special order, August 20, 1909, No. 1152, the companies operating elevated lines in the Brooklyn Rapid Transit system were required to keep the daily records of passengers in such a way as to

In attempting to enforce orders as to service on the subway and elevated lines of the Interborough Rapid Transit Company, the Commission was met by the claim that specific violations of the order complained of were the result of unavoidable accidents causing delay to traffic and thus causing a violation of the order of the Commission. In order that the Commission might have information in relation to such delays, it issued a supplementary order (1,312, January 13, 1911), requiring the Interborough Rapid Transit Company to give notice to the Commission in writing within twenty-four hours of every accident or delay which renders impossible compliance with the service orders issued by the Commission. The service orders adopted in February, 1909, for the various elevated lines of the Brooklyn Rapid Transit system also provide that delays, making it impossible for the company to operate the number of trains required by the orders, shall be immediately reported to the Commission and "within three days after every such delay, a full statement in writing of all the facts in relation thereto shall be submitted." Moreover, the general order (1,142, August 27, 1909), in relation to reporting of accidents, requires that any interference with or stoppage of traffic resulting in a delay of fifteen minutes or over shall be reported to the Commission immediately, if serious, and, in any case, within three days. Such a record is important in considering specific complaints as to service or in checking up to see whether the companies are complying with adopted service orders. This record is also important in determining whether the delays are caused by defects in the equipment of the company or

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segregate so far as possible the passengers carried on each elevated line.

by vehicular traffic or other conditions subject to amelioration.

Service Orders and Standards.—In regulating street car services the Commission has done a great deal of pioneer work and has adopted new standards and methods. The law requires the companies to furnish, and the Commission to enforce, "adequate service." To carry out this provision, it has been necessary for the Commission to define what constitutes adequate service and to define it in such a way that it may be included in effective and legally enforceable orders. In prior attempts at regulation it had been usual to specify the minimum number of cars that should be run. But the fluctuations in travel are so great that a fixed minimum that is reasonable and effective under average conditions permits overcrowding at certain times and requires the running of an excessive number of cars at other times. This is brought out in the opinion of Commissioner Maltbie in submitting an order (No. 422, April 17, 1908), in relation to service on the Twenty-third Street cross-town line of the New York City Railway Company:

> The passenger traffic upon the surface street car lines in the city of New York fluctuates greatly from hour to hour, day to day, season to season and year to year. The number

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[1] In order that service inspections may be of some permanent value for comparative purposes, inspections are made of rush hour traffic on each car line at approximately the same dates each year. The count of traffic shows the number of cars, seats, and passengers in each direction during the morning and afternoon rush hours. This data is then compared with similar data obtained about the same time during the preceding year and the percentage increase or decrease in seats and passengers is noted. If there has been a comparative decrease in seats and the count indicates that the service is inadequate, the company is asked to rectify the defect.

of cars which must be run to provide adequate service upon a clear day is often quite different from the number needed at similar hours upon a stormy day. Saturdays and Sundays are very busy days upon some lines, but during the other five days in the week the use made of these lines may be small. The traffic upon certain lines increases as summer approaches and falls off when winter returns. Meetings, conventions, parades, games, etc., constantly cause important fluctuations. To meet these varying conditions, the traffic manager must provide a varying schedule, having in mind not merely the conditions that ordinarily obtain but any special circumstances which call for a greater or less number of cars than ordinarily needed.

In attempting to fix the standard of adequate service for the various lines, the commission has, with one exception, specified the minimum number of cars that should be run. But a fixed minimum which is reasonable and yet effective under ordinary circumstances may impose an unnecessary burden upon the company at certain times and permit overcrowding at others. The proper standard should be so elastic that it would be neither too harsh nor too mild, but at all times so suited to the conditions as to provide as adequate service as could reasonably be expected. The requirement that a certain number of cars must be run during certain hours has been found to be too rigid and not sufficiently elastic for certain surface lines.

This order required the operation daily over every point on the line either (1) a sufficient number of cars in each direction past any point of observation to provide during every fifteen-minute period of the day or night a number of seats at least 10 per cent. in excess of the number of passengers at that point, but not less than six per hour in each direction, or (2) the maximum number of cars that could be operated on the line based upon the possibility of an eighteen-seconds headway or 200

cars per hour. In further explanation of this order, Commissioner Maltbie says:

The purpose of this order is to give every one a seat, and a 10 per cent. excess of seats over passengers has been required because of the irregularity of traffic and of cars. If the cars were to run with absolute regularity and if passengers were to board these cars at regular intervals and at equidistant points, it might not be necessary to provide a greater number of seats than passengers, but cars do not run regularly and passengers do not board the cars with absolute uniformity, and it has been found, as a matter of practical observation, that in order to provide seats for all passengers, it is necessary to run cars with a greater seating capacity than the number of passengers. Whether a 10 per cent. excess is sufficient to accomplish this result cannot be determined without experiment, and it is possible that after a trial has been had it will be necessary either to increase or decrease the percentage of excess suggested.

The alternative proposition suggested, viz., that if a 10 per cent. excess of seats over passengers is not provided, a certain number of cars must be run, has been placed in the order because it is physically impossible, under the conditions which obtain in New York, always to provide a seat for every passenger. The traffic is so heavy at times that to attempt to provide every one with a seat would so interfere with the carrying capacity of the line that the time consumed in passing from one point to another would be so great, because of the low rate of speed due to car congestion, that the advantage of a seat would probably be more than offset by the increased time required.

The provision requiring a 10 per cent. excess of seats over passengers has not been included in later orders issued by the Commission. The orders now in force usually provide for either (1) the operation during each

fifteen-minute or thirty-minute period of cars or trains providing seats at least equal to the number of passengers, or (2) the operation of the maximum number of trains or cars that can be operated. Orders of this kind are at present in force on the subway and elevated lines of the Interborough Rapid Transit Company.[1]

On the most important lines in Manhattan and Brooklyn, the companies cannot operate enough cars during rush hours to furnish seats for all, and on many lines, with the tracks used to the fullest capacity, there is excessive overcrowding. The various orders of the Commission which establish the standard of a seat for every passenger or the operation of the maximum number of cars do not, with perhaps one or two exceptions, involve the mooted question of whether a company should be required to provide, where the track capacity is adequate, a seat for every passenger during rush hours. This would require the company to furnish additional cars and additional power capacity that would be used only for a few hours during the day. It is sometimes asserted that it is financially impracticable for a street railway company to provide seats for all during rush hours. This

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[1] Order 1,211, April 5, 1910; 1,217, April 11, 1910; 1,291, December 23, 1910. Owing to varying conditions and the use of the same track by different lines, the form of the order is varied so as to require a maximum proportional service for each line during rush hours over points of restricted capacity and a maximum operation of short-line trains or cars in rush hours over points where the capacity is not restricted. This is true of the orders adopted in 1909 regulating service on the various elevated lines of the Brooklyn Rapid Transit system. Moreover, these orders, instead of providing a fixed fifteen- or thirty-minute interval during which the number of seats shall equal the number of passengers, establish for each line varying intervals of from twenty to forty minutes depending on the varying scheduled headway between trains.

question came up in connection with an order regulating service on the Broadway line of the Brooklyn Union Elevated Railroad Company. (Order 1,014, February 2, 1909, amended February 19, 1909.) On this line it was physically possible, even during rush hours, to run enough trains to provide seats for all. Accordingly the order adopted conforms to orders applicable to the other elevated lines in requiring as many seats as passengers during specified periods or have in force a train schedule that would, as a matter of fact, provide as many seats as passengers. The following is from Commissioner Bassett's opinion in this case:

> The company has quite successfully demonstrated that it is highly unprofitable for it to furnish cars and extra power capacity when this extra car capacity can earn only during two trips each day. This agreement, carried to its logical conclusion, would mean that the company should be permitted to supply an inadequate service, although the track capacity would permit an adequate service. The Public Service Commissions Law demands adequate service first of all requirements. To fulfill the law a company may in some instances need to run certain trains that are not remunerative. But while insisting on a seat for every passenger as the ideal of adequacy, the commission should be liberal in allowing the company to cut back its trains so as to run the fewest possible vacant seats.

However, in the Bronx, Queens, and Richmond, where, in general, track conditions would permit the running of sufficient cars to provide seats in rush hours, the few orders that have been issued do not require seats for all or maximum service, but seats for all or the operation of a minimum schedule, and this minimum schedule is not designed to furnish seats for all in the rush hours.

(See New York and Queens County Railway Company service order 1,349, July 28, 1911, amended August 18, 1911.) This part of the problem of defining adequate service has not been worked out as yet.

Service orders have been issued from time to time covering almost all the transportation lines in New York City. Many of the orders, however, especially those issued in 1908 and 1909, were limited to two years and have consequently expired by limitation. The companies have followed the standards fixed by the old orders and it has not been necessary to renew them. Moreover, the companies have become acquainted with the standards required by the Commission and matters are now much more frequently adjusted by correspondence or by conference between the Commission's engineers and the operating officials of the company. During the years 1910 and 1911 few service orders have been issued. The informal adjustment of service matters is, in most cases, much more effective. Usually by conference an improvement in service can be secured in a few days that would necessarily take months under the method of public hearings and formal orders.

Equipment Inspection Bureau.—The Equipment Inspection Bureau has charge of all investigations and work relating to equipment. Clifton W. Wilder, electrical engineer, is at the head of the bureau. There are about twenty employees in the bureau, including five electrical engineers, twelve railway engineers, and one chief inspector of electric meters. This bureau, in addition to inspecting equipment, appraises the property of railway and lighting companies whenever such appraisal is needed in connection with rate or capitalization cases. The law requires the companies to provide safe and adequate equipment and facilities. During 1910 the Equip-

ment Bureau investigated approximately 200 complaints in relation to the equipment and service of the railway and light companies. In eighty-four of these cases just grounds were found for complaint, and upon representations of the Commission changes or improvements were made by the companies so as either to remove or reduce the cause of complaint. In eighty-seven cases it was found that there was just cause for complaint, but the conditions were such as to make it either impossible or inadvisable to take action. Twenty-nine complaints were found, upon investigation, to be unjustified. The bureau also, during the year 1910, investigated the equipment involved in 332 accidents for the purpose of ascertaining whether the equipment was at fault and of ascertaining what, if any, changes or improvements should be made with a view to reducing similar accidents in the future. The bureau has an elaborate electric laboratory equipped with the necessary standards, instruments, and apparatus for the checking of electrical meters and for other electrical investigations which are made by the bureau from time to time.

When the Commission entered office July 1, 1907, the equipment of the surface lines in Manhattan was in a deplorable condition. For some time only a minimum amount of repairs had been made, and consequently the cars, track, and entire equipment had run down to such an extent as to be in many cases unfit for service. When a car broke down in service, as did an average of one of every five daily during the month of October, 1907, it was pushed into the barn and patched to resume service. Instances were frequently found in the records of cars that had been run in for repairs on two and even three consecutive trips. Constant interruptions to service occurred because of breakdowns, thus demoralizing the

service of the entire system. The electrical engineer of the Commission and his assistants made an inspection of some 1,600 out of a total of about 2,000 cars being operated in Manhattan. On 450 cars examined an average of four defects on each car was found. Accordingly, near the close of the year 1907, an order was adopted requiring the thorough overhauling and repair of all cars operated on the lines of the New York City Railway Company. The order adopted (No. 179) required the company to thoroughly overhaul and repair its cars so that they would be in first-class operating and substantially new condition. It was provided that, after February 15, 1908, at least ten of such overhauled cars should be turned out each day until all had been so overhauled.[1]

[1] The company was required to notify the Commission each day of the cars thus turned out and such cars were then inspected by the Commission's engineers. The receivers criticised the action of the Commission but complied with the above and other similar orders. They also voluntarily purchased many new cars of the pay-as-you-enter type and extensively repaired or reconstructed the track and other equipment. As a result of these improvements the daily average of cars run in for repairs for August, 1908, was only seventy-one as compared with 352 for October, 1907. The overhauling of the cars also greatly improved sanitary conditions, decreased noise of operation, and added in other ways to the comfort of the passengers. Later, similar orders were issued for the overhauling of the cars of the surface lines in the Bronx and of the Coney Island and Brooklyn Company operating in Brooklyn. An inspection showed that the equipment of the surface lines in the Brooklyn Rapid Transit System was in good condition. It had been found that the cars of the Coney Island and Brooklyn Railroad Company were constantly breaking down when crossing Brooklyn Bridge and thus delaying traffic destined to all parts of Brooklyn on the lines operated by the Brooklyn Rapid Transit System, as well as on the lines of the Coney Island and Brooklyn Railroad itself. After the cars of the Coney Island and Brooklyn Company had been put through the shops for a complete overhauling, the number of delays

Under an order of the Commission, every railroad and every street railroad corporation files with the Equipment Inspection Bureau a semi-annual detailed report in relation to the number and character of car motors, car bodies, and car trucks operated. (See order No. 437, April 28, 1908, and order in Case No. 1,210, January 18, 1910.) The report includes information as to general type, manufacturer, date purchased, over-all dimensions, arrangement of seats, space per passenger, weight, cost, brakes, heaters, etc. In addition to the semi-annual statement specific statements are required within five days of the placing in service or retirement from service of any car motors, car bodies or car trucks. This information is indispensable to the Commission in considering general questions of equipment and also in acting upon specific complaints relating to the condition of a particular car, and in investigating accidents occurring upon a particular car.

Examination of Plans for Construction and Equipment.—Prevention is usually much easier than correction. It is easier and more economical, both from the standpoint of the supervising authority and the company supervised, to stop mistakes in car equipment before the cars in question have been constructed, than to wait until the cars are placed in service and then to require reconstruction to conform to public requirements. With this object in view, the Commission issued an order (Order June 16, 1908, No. 584, revised October 11, 1910, No.

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upon the Brooklyn Bridge of the cars of that company was reduced from 147 in September 1907, to fourteen in September 1908, and the number of minutes lost through interruption of traffic was reduced from 621 to twenty-seven. Since the establishment of the Commission, the inspection and maintenance methods of most of the companies have been greatly improved.

1,278), requiring all street railroad corporations to submit to the transportation engineer of the Commission a memorandum and general drawings showing the character and type of car equipment contracted for and all reconstructed car equipment about to be put into operation.[1]

In certain cases of construction of new roads or the extension of old ones, the Commission has required the filing of general plans for construction and equipment. Thus the order of the Commission in case No. 811, January 15, 1909, granting the approval of the Commission to the exercise of the franchise to the New York, Westchester and Boston Railway Company, provides that, prior to the construction of any portion of the railroad, the company shall file plans, maps, and specifications, and no future construction or installation upon any part of the road shall be begun until such plans have received the written approval of the Commission.

Fenders and Wheel Guards.—Under orders issued chiefly during the year 1909, the Commission has required the equipment of surface cars with either wheel

[1] Such plans must be submitted within five days after entering into contract for the purchase of new car equipment and ten days before putting into operation any car or car equipment built by the company or so reconstructed by it as to substantially alter its arrangement and equipment. Upon receipt of the plans, they are examined by the Equipment Inspection Bureau and, in case they are defective in any essential particular, the company is notified. The Commission's formal approval of the plans is not, however, necessary, and recommendations in regard to changes made by the Commission can, of course, be disregarded by the company. In case such equipment were put into operation, however, the Commission could, after a formal hearing, order its discontinuance. No case of this kind has, as yet, come up.

guards or projecting fenders, or both.[1] In order to secure information necessary to intelligent action on this matter, the Commission held an extended series of tests during the Fall of 1908. The tests were carried on by a committee, of which A. W. McLimont was chairman. In all, sixty-seven different devices were thoroughly tested. The report states that this investigation, "while not proving that any particular fender or wheel guard had reached a point of efficiency to warrant its preference over all others, has, without question, demonstrated that there are several available fenders and wheel guards far superior in actual operative merit to most of the contrivances used at present, and less expensive to maintain in life-saving condition, and that their adoption by street car companies not only in New York City, but all over the country, would therefore tend to lessen in a marked degree the appalling number of fatalities and serious accidents occurring on street railways." The report recommended that all cars in service in New York City be equipped with automatic wheel guards, and that all cars, except those operating in the Borough of Manhattan and certain congested streets of Brooklyn, should be equipped also with projecting fenders.[2]

The orders of the Commission require that types of

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[1] See Third Annual Report, Public Service Commission, First District, 1909, Volume 2, pages 282–302.

[2] The orders of the Commission have generally followed the above recommendations except that certain lines operating in suburban territory have been permitted to install a platform trip projecting fender, and have not been required to install wheel guards. In some cases also, the orders of the Commission have required equipment with wheel guard only for cars not operated through congested districts, and where, according to the committee's recommendation, fenders should also be required.

fenders or wheel guards used must be approved in advance by the Commission. In case the device submitted has not been tested in the series of tests made in 1908, the proposed device is subjected to test by the Equipment Inspection Bureau and a formal order is issued approving of the specific type. The tests made in 1908 showed that most of the wheel guards then in use in Manhattan were not nearly so efficient as certain other types tested, and the companies in submitting their plans for approval in most cases voluntarily adopted types that had stood high in the official test. One company, however, desired to continue the use of a certain type of wheel guard, but consent was refused, as that type of wheel guard was not considered suitable for New York conditions of pavement and track.

The Commission recognizes that even the best type of fender is useless or worse than useless unless maintained in a thoroughly operative and life-saving condition. Accordingly, fenders in use are frequently inspected by the Equipment Bureau. In case defects are found, the company is notified and later another inspection is made to see that such defects have been remedied.

Brakes.—Doubtless there is no more important factor in the efficient and safe operation of street cars than an effective braking system. An examination of the accidents statistics collected by the Commission indicated that the proportion of accidents was greater on double truck cars of over 25,000 pounds, not equipped with power brakes, than upon cars so equipped. Moreover, the best practice seemed to indicate that practically all double truck cars, and especially double truck cars of over about 25,000 pounds, should be equipped with both a hand-brake and a power-brake. The Commission, after a formal hearing, issued an order, October 10, 1911, Case

No. 1,369, requiring that, after June 1, 1912, all passenger double truck surface cars in service, weighing over 27,000 pounds, and, after June 1, 1913, all such cars weighing over 25,100 pounds, shall be equipped with power-brakes and geared hand-brakes. In addition, it is provided that all double truck cars weighing less than 25,100 pounds shall, after June 1, 1912, be equipped with geared hand-brakes.

Accidents.—Orders issued by the Commission require gas and electric corporations, railroads, and street railways to report all accidents. Gas and electric corporations are required to report, within five days, every accident resulting "in loss of life or injury to person, or any interference with constant supply of gas or electricity to any consumer or consumers."[1] The order in relation to railroad and street railway corporations requires an immediate report by telephone of every serious accident or delay to traffic.[2] Almost all the serious accidents and delays are immediately investigated either by a transit inspector or by an engineer from the Equipment Inspection Bureau. Usually, in case of a serious collision, a

[1] See Third Annual Report, Public Service Commission, First District, 1909, Volume II, page 242, Order in Case No. 1,165.

[2] The offices of the Commission are open from 8 A. M. to 11 P. M. to receive such reports, and accidents occurring after 11 P. M. are to be reported at 8 A. M. the following day. The telephone report must be followed within three days by a more detailed written report. In addition, a monthly summary statement of accidents and delays is required and also an annual statement as a part of the regular annual report of the company. The Commission's Order of August 27, 1909, Case No. 1,142, is not very clear as to what accidents should be immediately reported, and the companies accordingly claim the right to interpret the term "serious" in their own way. See Third Annual Report, Public Service Commission, First District, 1909, Volume II, page 235.

public hearing is held. As a result of the inspection or hearing, defects in equipment or methods of operation are called to the attention of the company, and, in a few cases, a formal order is issued requiring the installation of protective devices or the adoption of different methods of operation. In the vast majority of cases, however, no formal order is necessary. In case the accident is due to the negligence of an employee of the company, that fact is brought to the attention of the company, and the company is asked to inform the Commission what measures will be taken to prevent the recurrence of the accident. Though the Commission has no powers in relation to the discipline of employees, their efficiency is doubtless influenced by the fact that negligence is officially brought to the attention of the company's officials and sometimes results in dismissal from the service.

As a result of improvements required by the Commission or voluntarily instituted by the companies, there has been a great reduction in the number of persons killed on the street surface railroads since the establishment of the Commission. For the year ending June 30, 1908, the number killed was 303; for 1909, 199; for 1910, 152; and for 1911, 169.

Car Heating.—An order of the Commission requires that all closed electric cars in service between October 15th and April 15th shall be equipped with suitable apparatus for heating by electricity.[1] Whenever the outside temperature is less than 40 degrees Fahrenheit, the temperature in the car may not be less than 40 nor more than 65 degrees Fahrenheit, except in the case of storm, accident, or other controlling emergency for which the

[1] Final Order in Case No. 1,170, November 19, 1909 as amended January 18, 1910.

company is not responsible. This regulation is posted in each car in a manner approved by the Commission.

Locomotive Boilers.—The Commission for the First District has jurisdiction over the inspection of locomotive boilers used on locomotives operating solely within New York City. Detailed regulations have been adopted by the Commission to govern the inspecting, testing and washing of locomotive boilers. (Order 1301, December 13, 1910.)

Grade Crossings.—The Railroad Law provides that the expense of eliminating grade crossings throughout the state shall be borne one-half by the railroad company, one-quarter by the state, and one-quarter by the local government. To defray the state's share of this work within New York City, the Legislature of 1909 appropriated $250,000, and the Legislature of 1911 the same amount. This money is being used largely in Queens County to eliminate many of the numerous grade crossings on the Long Island Railroad. December 31, 1910, there were a total of 495 grade crossings, the most important of which were in Queens and Richmond Boroughs. During the three years, 1908-1910, sixty persons were killed at these crossings.

Gas.—The law gives the Commission power to test the quality of gas and electricity and to fix, from time to time, standards for the measurement of the purity or illuminating power of gas. The law of 1906 (chapter 125) fixes the candle power of gas at 22. No heat standard is prescribed. Tests as to candle power have been continued by the City of New York under a law in force prior to the creation of the Commission. No tests as to quality of gas have been made by the Commission, and no complaints have been received in regard thereto.

Gas Meters.—The law provides that no gas meter

shall be set in place until it shall have been inspected and sealed by an inspector of the Commission. Twenty-two gas meter testers are constantly employed by the Commission in carrying out this provision of the law. During the four years ending June 30, 1911, 1,358,645 new meters, and meters that had been removed or repaired by the gas companies, were tested and sealed by the Commission's inspectors. The Commission, on October 2, 1908, adopted an order (No. 758) prescribing that all gas corporations remove and submit to the Commission for test all gas meters which had been in use for more than seven years, and also that, after July 1, 1909, no meter should be continued in use, by any such corporation, if it had been in service untested for more than seven years, and that no such gas meter should again be set for use until tested and approved by the Commission.

The law also provides that the Commission shall test gas meters on the request of any consumer, and that, if the meter is found to be more than 2 per cent. fast, the expense of the inspection shall be borne by the company, but that otherwise the expense shall be borne by the consumer. The fees for gas meter testing adopted by the Commission vary from 50 cents for a ten-light meter to $2.00 for the largest size meters. Of the 19,970 "complaint" meters tested during the four years ending June 30, 1911, 8,770 were found to be more than 2 per cent. fast and 2,063 more than 2 per cent. slow.

Electric Meters.—The Commission requires that all electric energy meters measuring current sold by light and power companies to consumers, shall be of an approved type, and that no type of meter shall be used unless it has received the approval of the Commission. In order to determine what an approved type shall be, specifications have been adopted, setting forth certain re-

quirements as to the accuracy of meters under varying conditions. Meters submitted to the Commission for approval are subject to careful examination and exhaustive tests, as prescribed by these specifications. The Commission has approved a number of general types of meters. The Commission has prescribed a uniform set of rules and regulations, relative to the testing of electrical meters, and to the reporting of such tests to the Commission.

The Commission tests electricity meters only on complaint of a consumer. Such complaints are comparatively few, the tendency of electricity meters being to run slow rather than fast. The fee for testing an electric meter varies with the capacity of the meter tested, the minimum fee being $1.50. This fee is returned to the consumer in case the test shows that the meter is more than 4 per cent. fast. During the year ending June 30, 1911, only 416 electric meters were tested on complaint.

Statistics and Accounts.—When the Commission was established, a considerable part of the surface transportation system of the city was in a demoralized condition that naturally led, for the most part, to bankruptcy and receiverships. This condition came as the result of financial manipulation of the most flagrant kind. As a result of the poor financial condition, equipment was allowed to so deteriorate as to render safe and adequate service impossible, and the service itself was cut down in every way in order to economize on operating expenses. One of the chief purposes in establishing the Commission was to put a stop to financial mismanagement. As an important factor in carrying out this object, the Commission created a Bureau of Statistics and Accounts. Dr. Adna F. Weber, Chief Statistician, is at the head of this Bureau. There are from fifteen to twenty

employees in the bureau, including five statisticians and six accountants. One of the first problems of the Bureau was to draft a uniform system of accounts for the various classes of corporations under the supervision of the Commission. As a result, uniform systems of accounts have been adopted for gas corporations, for electrical corporations and for street and electric railways. In prescribing a system of accounts, the aim has been to require the accounts to be kept in such form and in such detail as to show clearly the information needed in regulating rates and in approving the issue of stocks and bonds. The Commission also requires street and electric railways to make monthly, quarterly, and annual reports, and gas and electrical corporations to make annual reports, in accordance with forms prescribed by the Commission.[1]

The Bureau is required to prepare a great deal of data in connection with rate cases and applications for the issue of stocks and bonds. It is also required, in a great many cases, to make an audit of the financial condition

[1] When a report is received, it is checked up as carefully as possible by the accountants of the Bureau, and the companies are asked to explain any doubtful items or to make changes in the reports to conform to the regulations contained in the uniform system of accounts. This checking of reports involves a great deal of labor, but is quite necessary in order to insure a degree of reliability and uniformity. Soon after the monthly reports of street railways are received from the companies, a blueprint abstract of the reports is made and furnished to the press and to individuals on application A brief abstract of the quarterly returns is published for general distribution. The annual reports of the companies are published in an annual statistical volume prepared by the Bureau and issued as a part of the annual report of the Commission. In addition to the annual company reports themselves, this statistical volume contains a thorough analysis and discussion of the statistics contained in the reports.

of corporations, and, where the Commission has authorized the issue of stocks and bonds for a specific purpose, the Bureau is required to audit the expenditures and see that the orders of the Commission as to the use of the capital are complied with.

Issue of Stocks and Bonds.—In considering applications for the issue of stocks and bonds, the Commission makes careful investigation and a valuation of property where necessary to determine whether the proposed issue is for a purpose properly chargeable to capital. It has been held that new securities should not be issued to cover replacement of material worn out or superseded, except in extraordinary cases. In the matter of the application of the Coney Island and Brooklyn Railroad Company, Case No. 420, July 29, 1910, the order of the Commission allows the issue of bonds to cover certain expenditures of a replacement nature, but on the condition only that a sinking fund shall be created to retire such bonds within twenty years. A recent decision of the Court of Appeals in deciding an appeal from a decision of the Commission for the Second District seems to hold that the Commissions have no discretion in this matter and may not in any case approve of the issue of securities issued for operating expenses or replacement.[1] The authority of the Commission over the issue of securities on a reorganization is still somewhat unsettled. The Bondholders' Committee submitted to the Commission a plan for the reorganization of the Third Avenue Railroad Company, now in the hands of receivers, which involved the issuance of nearly $70,000,000 in securities. The Commission found by its appraisal that the value of

[1] People *ex rel* Binghamton, L. H. & P. Co. vs. Stevens, decided by the New York Court of Appeals, October 3, 1911.

the property to be represented by such securities was about $40,000,000. The Commission accordingly refused to give its approval to the proposed plan of reorganization.[1] The Bondholders' Committee then submitted a modified plan, which was also disapproved.[2] The company then appealed to the courts and secured a decision which apparently holds that the Commission must approve of a plan of reorganization, if the necessary statutory steps have been taken, and is without power to limit the amount of securities to the value of the property.[3] An appeal has been taken to the Court of Appeals, but has not yet been determined. It can readily be seen that if, on reorganization, securities may be legally issued in amounts in excess of the value of the property, the safeguard intended by the law to be thrown around the issuance of new securities is seriously impaired.

In authorizing the issue of new capital, the Commission requires that the company keep separate and accurate accounts of the proceeds of the sale of securities authorized, that reports be filed with the Commission each month, and that all accounts and vouchers be open to audit by the Commission's accountants. It is also provided that, before any expense is undertaken, a proper itemized bill of such proposed expenditure shall be submitted to the Commission and approved by it as properly chargeable to capital. In some cases the Commission has authorized the issue of bonds at a discount, but in such

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[1] See Decision disapproving plan of reorganization, September 23, 1909, Case No. 1,126.

[2] See Opinion disapproving plan of reorganization, July 29, 1910, Case No. 1,181.

[3] People *ex rel* Third Avenue Railroad Company, published in *New York Law Journal*, June 15, 1911.

case a condition is included requiring that all discount and expenses in connection with the sale shall be amortized out of the income of the company during the term of the bonds.

Franchises.—The Railroad Law required the State Board of Railroad Commissioners to certify to the public convenience and necessity of every proposed railroad or street railway before the same could be constructed. The Public Service Commissions Law devolves this power upon the Commissions and, in addition, provides that railroad, gas, and electric companies may not begin the exercise of any franchise without having first obtained the Commission's permission and approval. It was thought that this statute gave the Commission considerable additional authority to that possessed by the Board of Railroad Commissioners in granting a certificate of public convenience and necessity. It was believed that the Commission's power under the new provision would extend even to the stipulation of terms and conditions as a condition to its approval of the exercise of a franchise. In the South Shore Traction Case, however, the Commission's decision refusing to approve the exercise of the company's franchise was reversed by the Court of Appeals, the court apparently holding that the Commission's powers in relation to the approval of a franchise do not differ very much from the restricted powers of the former Railroad Commission in granting a certificate of convenience and necessity to a railroad.[1] As to rapid transit franchises, however, the Commission has, under the Rapid Transit Act, extensive powers. The franchise in the first instance is granted by the Commis-

[1] People *ex rel* South Shore Traction Company vs. Willcox, 196 N. Y., 212.

sion and thus all terms and conditions contained in the franchise or contract must be worked out by it. In December, 1908, Commissioner Maltbie made a report to the Commission on the indeterminate franchise with special reference to its application to subway franchises; and the terms of the Rapid Transit Act were, in 1909, amended so as to include the indeterminate feature for rapid transit contracts.

The Commission has created a Bureau of Franchise for the purpose of gathering data relating to all public service corporations in New York City to which franchise rights have been granted. The companies were required to file with the Franchise Bureau certificates of incorporation, certificates of merger and reorganization, copies of all franchises and certificates granted by prior boards trackage agreements, operating agreements, leases, deeds, mortgages and all special legislation and court decisions affecting the franchise rights. Nearly 6,000 franchise documents of this kind have been collected. Information secured by the bureau in this and other ways has been so organized as to make it readily available. Dr. Delos F. Wilcox is chief of this bureau. The bureau has done valuable work in making an investigation of all abandoned tracks in New York City and of all old franchise rights not now utilized. As a result of this work the State Attorney General has begun proceedings to require the removal of certain abandoned tracks. Negotiations carried on by the Commission have also resulted in agreements for the removal of certain of these tracks.

Rate Regulation.—The Commission has not had a great many cases involving rate regulation. Laws passed in 1906 established maximum rates for most of the gas and electric companies in New York City. Con-

sequently, there has not been such demand for a reduction in rates as there might otherwise have been. At the time of the Commission's organization, the electric companies refused to furnish breakdown service to persons having their own electric plants at times when those plants should be out of service or not able to supply all the energy needed. After some negotiations the Commission induced the companies to resume the supply of breakdown service for an adequate charge. As a result also of the Commission's negotiations for a general reduction in the price charged for electric current, the New York Edison Company, July 1, 1911, put into effect a new tariff involving a revision of rates with considerable reductions to consumers using more than $25 worth of current a month.[1]

Court Review.—The Public Service Commissions Law does not contain any provisions for a review of the orders of the Commissions by the courts. It was assumed that orders of the Commission would be reviewable only in the same degree as an act of the Legislature.

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[1] The Commission has decided cases involving the charges for gas and electricity of the Queens Borough Gas and Electric Company and the charge for gas of the Brooklyn Borough Gas Company and of the Kings County Lighting Company. These decisions have been based, among other things, on a careful appraisal by the Commission's engineers of the property of the companies. The opinion in the Queens Borough gas case by Commissioner Maltbie contains an extended discussion of a number of important problems involved in valuations for rate purposes. A new method was used for the treatment of increment in land values. Following the decision of the United States Supreme Court (Consolidated Gas Company vs. Willcox, 112 U. S., 19), land was included at its present increased value but the estimated annual increment in land value was added to the income account of the company. Consequently, these items tended to offset each other in so far as their influence on the rates to be charged by the company was concerned.

An act of the Legislature establishing rates or regulating service is reviewable only on the ground that it conflicts with some constitutional provision or guarantee. Under the Public Service Commissions Act the Legislature delegates power to fix rates and regulate service to the Commissions, and it was assumed that the orders of the Commissions in regard to rates and service would be reviewable only to the extent that acts of the Legislature on these same matters were subject to review. The companies at once contended, however, that the orders of the Commission were reviewable by certiorari proceedings, and their contention has been upheld by the courts.[1] The right to review by certiorari proceedings gives the companies power to delay the enforcement of the Commission's orders and gives the court power to review and determine anew questions passed on by the Commission, even though such questions do not involve a taking of the company's property within the meaning of the constitutional guarantee. The review by certiorari also renders procedure before the Commission unduly cumbersome and prolonged. Under the decision of the court it is necessary for the Commission to produce evidence upon the record in substantiation of facts upon which an order is made. This necessity of having full evidence in the record makes procedure before the Commission quite similar to court procedure and seriously interferes with an efficient and prompt administration of the law.

Jurisdiction.—The jurisdiction of the Commission over certain matters affecting the health and the convenience of the general public as distinct from the comfort

[1] See People *ex rel.* Central Park, North and East River Railroad Company vs. Willcox, 194 N. Y., 383, and People *ex rel.* Joline and Robinson vs. Willcox, 134 Appellate Division, 563, reversed 198 N. Y., 433.

and safety of passengers and employees is rendered doubtful by a recent decision of the Court of Appeals.[1] This case involved an order of the Commission directing the company to make certain changes in its equipment and in its manner of loading and unloading manure cars at its yard along the Harlem River. In making the order the Commission proceeded upon the theory that its jurisdiction extended to the case of a nuisance occurring in the operation of a railroad and affecting the public health of a locality. It was assumed that the fact that the local Board of Health had power to abate the nuisance did not prevent the Commission from acting. The Appellate Division held that the order of the Commission was within its jurisdiction, but, on appeal, the decision of the Appellate Division was reversed by a divided court, four to three.[2] This decision casts some doubt over the

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[1] People *ex rel.* N. Y., N. H. & H. R. R. Co. vs. Willcox, 200 N. Y., 423, decided January 24, 1911.

[2] Judge Gray in delivering the opinion of the majority of the Court said:

"Broad as are the powers conferred by the act, they are, by plain intendment, as I read them, such as are directed, exclusively, to the amplest supervision and regulation of railroad corporations, in such respects as concern their construction, maintenance, equipment, terminal facilities and operations in the transportation of persons and property. The exercise of the powers is intended to be when rendered necessary, in the judgment of the commissions, by reason of unjust, unsafe or inadequate regulations, practices, equipment, appliances or service, 'in respect to the transportation of persons, freight or property.' The object of the legislature, as fairly to be deduced from its enactment, was to regulate the management and the operations of common carriers, within the State, in the interest of the public; that is, of the persons who should use the facilities for the transportation of themselves, or of their property; who should serve them; or who should be interested in them, as holders of their capital stock, or obligations. . . . The legislature, in creating the

Commission's jurisdiction in certain matters. For example, in a great many cases, the Commission for the First District has, on complaint, secured the abatement of such nuisances as needless noise from surface cars going around curves or from flat wheels, etc. Here the principal nuisance is to those who dwell near the tracks and not to the passengers or employees.

In the same case the Court of Appeals holds that section 45 of the Public Service Commissions Law, which gives to the Commissions "the general supervision of all common carriers" and grants them power to examine the same and to keep informed as to their general condition and the manner in which their lines are managed "not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the Commission and charter requirements," does not give the Commission power to enforce provisions of law other

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public service commissions, had in contemplation a general system for the supervision and the regulation of common carriers within the State; which should promote efficiency in management, operations conducive to the comfort and safety of passengers and employees, and an equipment and facilities adequate and proper for the transportation of persons and property. Boards of health existed to act locally and exclusively for the protection of the health of municipalities. No intent to interfere with matters committed to their jurisdiction is clear from the language of the act and none should be implied. Powers differing as the objects proposed to be attained differed, were vested in the two bodies. In their several spheres of action, each body had its peculiar and special functions, with machinery supposed to be adequate to reach the evils aimed at and to enforce its mandates for their cure. To hold that they could act concurrently, not only would be without justification in the scheme of this statute; it would permit a clash of authority and an acute situation might arise, as Mr. Justice Scott observed in dissenting below."

than those contained in the Public Service Commissions Law. The court holds that the "provisions of law" referred to above relate only to provisions contained in the Public Service Commissions Law.

The Commission for the First District has had a very difficult field in which to work out the problem of regulation. The transit problem has been the crucial one and has been rendered impossible of satisfactory solution by the bankruptcy or poor financial condition of certain of the companies, by the extreme congestion of traffic and by the extreme difficulty of working out a fair agreement for the construction and operation of extensions to existing rapid transit facilities. Nevertheless, that the service has been greatly improved, there can be no doubt. Probably the greatest ultimate benefit resulting from the Commission's work will be through its enforcement of publicity and accounting control of the finances of the companies and through its supervision of intercorporate agreements. The Commission also serves as an arbiter for the adjustment or determination of complaints. This is but a minimum concession to the rights of the consumer in submitting to the paternal rule of the municipal monopoly. The Commission is necessary if for no other reason than that unregulated monopoly, no matter how beneficent its rule, is inconsistent with our ideas of justice.

PART V
CONCLUSION

CHAPTER XIX

IN CONCLUSION

THE greatest present-day municipal need is for a constructive policy as to the methods and means by which the city and the city-dweller are supplied with the services and commodities essential to urban life. In the preceding chapters the salient elements in such a policy have been elaborated. For the sake of emphasis and in order to point the way more clearly to a solution of our gravest municipal problems, it will be well to state in conclusion the elements that are vitally essential to an adequate constructive policy for the regulation of municipal utilities.

The first essential is the creation of public utility commissions with full and complete regulative powers. Any attempt to diffuse regulative power and responsibility under the time-worn guise of checks and balances should be militantly thwarted. Only where there is full power can there be unescapable responsibility and only where there is unescapable responsibility is there adequate motive for efficiency of the kind needed in utility regulation. Not only should the commission have complete powers and unquestioned autonomy, but its salaries should be large and its tenure reasonably long. The attempt to regulate million-dollar corporations through men of wee calibre is but another way of saying that the million-dollar corporations may do the regulating. The highly

paid, well-fed corporate expert must be met with a highly paid, highly equipped civic expert. The commissioners themselves need not be technical experts, but they must be sufficiently trained to supervise the most technical of experts. By this method the community can protect itself against the most cunning and greedy of its serving concerns.

The second vital need is that this Commission should be isolated and *conspicuously* responsible. Whether the commissioners should be elective or appointive will depend largely upon the social habits and standards of the community in question. To the author's mind, appointment will, in most communities and in most instances, secure better officials. If the commissioners are appointive, both appointment and removal should be vested in the executive with no need of sanction by any other authority; if elective, in most communities, they could be subject to recall. It is as essential that the commissioners be responsive to sustained public opinion as it is that they should be competent. The experts under them should have tenure during competency and efficiency. Whether elective or appointive, the Commission should be isolated and should be conspicuously the only administrative body responsible for utility regulation. This will prevent the shifting of blame for questionable acts on to others, or, still more pernicious, the diffusion of responsibility so that no one civic official cares much what is done. This isolation and conspicuous responsibility will tend more than any other factor to keep the commissioners out of politics in the objectionable sense of that term. It will tend to make them, not party tools, but agents of government.

As the more difficult problems of utility regulation are state-wide problems, they can be adequately coped

with only by state commissions. The third element essential to a constructive policy, therefore, is that there must be in all states with a considerable urban population a state public service commission. This does not mean that state commissions should dispense with municipal commissions; it only means that municipal commissions cannot dispense with the state commission. But a state commission in existence, there is no reason why municipal commissions should not exist for each of the largest cities. Indeed, the advantages of local autonomy and the need for an administrative tribunal to enforce local franchises and to secure the information needed for legislation by city and state, alike urge the advisability of subordinate municipal commissions for the largest cities. The best interests of the state, of the cities which do not care for the added expense of special commissions, and of the great urban centers will all be best subserved under a state commission with state-wide powers with subordinate city commissions in each of the largest cities.

Another essential vital to an adequate constructive policy for the regulation of municipal utilities is that franchises must be drawn with special thought for the protection alike of the consumer, the serving company, and the community. But four of the franchise essentials discussed at length in Part II need be re-stated here. These are: (1) that the franchise term should be as short as is consistent with profitable investment; (2) that the indeterminate franchise has merits over the term franchise; (3) that extensions and service should receive greater emphasis than financial compensation; and (4) that the franchise should reserve to the city and state unrestricted powers of regulation and unhampered means of franchise enforcement.

And, finally, no constructive plan for utility regulation is adequate that does not give to the municipality complete freedom and power to adopt municipal ownership and operation at will. This necessitates not only that the city be given full and unhampered power to acquire and operate its utilities, but that ownership and operation be made an actual possibility through the gradual creation, out of earnings, of amortization funds sufficient to liquidate the debts of the utility, if it continues under private ownership and operation, or to purchase the plant, if the city decides in favor of municipal ownership and operation. Under these conditions only is municipal ownership a real alternative. This alternative is valuable because it is the city's most potent means of franchise enforcement. The existence of the actual power of public ownership and operation will, the author fully believes, make public ownership and operation unnecessary, provided that regulation of the virility depicted in the preceding chapters be adopted. Only by so doing will or should the tendency to municipal ownership be thwarted. The experience of European and American cities amply supports this statement. The advantages of municipal ownership and operation are only excelled by the advantages accruing to the city under a competent and adequate policy of regulation. Adequate administrative regulation and control secures all the advantages of municipal ownership and operation with none of its disadvantages. Adequate administrative regulation and control, that is, affords all the advantages of centralization of control and retains all the advantages of diffusion of ownership.

Whether the courts justify utility regulation on the grounds that municipal utilities are monopolies or on the grounds that such concerns are subject to regulation in

return for the privileges, expressed or implied, that they have received from the city, the basic justification lies in the fact that, in cities, the community, not the individual, nor the corporation, is to be given prime consideration. A policy of regulation that embraces the fundamental principles just stated no longer condones a time-worn economy whose basis was the individual; it frankly accepts the economy which is the actual foundation of twentieth century legislation, and that is an economy the basis of which is group activity. Only by recognizing group needs and interests can urban legislation and administration adequately protect either the individual or the community. In urban life the individual is adequately protected only when the group is adequately protected. By stressing social welfare, the welfare of the individuals of the community is enhanced and the avenues are opened for a social democracy wherein the latent powers and possibilities of each individual have opportunity for expression. Without adequate and competent regulation of the most vital necessities of the citizen and the city, served to-day by quasi-public corporations, no such equality of opportunity is even thinkable.

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CHAPTER XX

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